

# APOSTLES ON APPEAL.

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No. 15.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

*IN ADMIRALTY.*

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THE S. H. HARMON LUMBER COMPANY ET AL.,  
*Libellants and Appellants,*

*vs.*

THE STEAM-TUG "WARRIOR," ETC.,  
*Respondent and Appellee.*

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E. W. MCGRAW, Esq.,  
*Proctor for Libellants and Appellants.*

MESSRS. PAGE & EELLS,  
*Proctors for Respondent and Appellee.*

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FILED JUNE 13, 1892.

FILED  
JUN 28 1892



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*Libellants and Appellants,*

*vs.*

THE STEAM-TUG "WARRIOR," ETC.,

*Respondent and Appellee.*

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1 In the District Court of the United States for the Northern  
 District of California  
 In Admiralty.  
 S. H. HARMON LUMBER Co., (a corporation), J. M. Weatherwax, }  
 S. H. Harmon, E. N. Harmon, Wm Kieth, Henry Johnson, }  
 Geo. M. Mitchell, Jas. Sennett and L. Mansur, Libellants, }  
 vs. }  
 STEAM TUG WARRIOR, Respondent.

## APPEAL.

*To the Honorable the United States Circuit Court of Appeals for the  
 Ninth Circuit:*

The Appeal of S. H. Harmon Lumber Co. and others, the above  
 named libellants, respectfully showeth that S. H. Harmon Lumber  
 Co., (a corporation), J. M. Weatherwax, S. H. Harmon, E. N. Har-  
 mon, Wm. Kieth, Henry Johnson, Geo. M. Mitchell, Jas. Sennett  
 and L. Mansur, as libellants, on the 3rd day of April, 1888, filed their  
 libel in the District Court of the United States for the \* Northern  
 District of California, against the Steam Tug Warrior, her  
 2 tackle, apparel, &c., in a cause civil and maritime, for the  
 recovery of damages to an amount exceeding thirty-seven  
 hundred dollars alleged to have been sustained by them as owners  
 of the American Schooner "Sailor Boy" by reason of damage done  
 to said schooner by reason of striking on the bar at San Pedro, Cal-  
 ifornia, while in tow of said steam tug Warrior on the 5th day of  
 January, 1888: that on the 3rd day of April, 1888, the said steam  
 tug Warrior was arrested on process issued on said libel, and on the  
 same day the Wilmington Transportation Company, (a corporation)  
 filed its claim in said action, alleging that said corporation was the  
 sole owner of said steam tug, and thereupon said corporation gave  
 a bond in due form of law for the release of said vessel in the sum  
 of \$7,419.26, and said steam tug was thereupon discharged.

That thereafter on the 26th day of April, 1888, the said Wilming-  
 ton Transportation Co. filed its answer to said libel, and thereafter  
 such proceedings were had in said cause that on the 12th day of  
 May, 1892, a final decree dismissing said libel was entered in said  
 cause by the District Court of the United States for the Northern  
 District of California.

And libellants are informed and protest that the evidence  
 taken in said cause is inconsistent with and does not support said  
 decree, but on the contrary on the evidence taken in said cause,  
 libellants were and are entitled to a decree in their favor.

Wherefore libellants appeal from the whole of said decree,\*  
 and pray that the Court will proceed and hear and examine  
 3 said cause, and that the decree of said District Court may be  
 reversed, and an order be made directing said District Court  
 to enter a decree for libellants.

Dated at San Francisco, May 27th, 1892.

E. W. MCGRAW,  
 Proctor for Libellants.

[Endorsed:] Rec'd copy of within Appeal this May 27, 92.  
PAGE & EELLS,  
*Proctors for Claimants.*

Filed May 27th, 1892.

SOUTHARD HOFFMAN, *Clerk.\**

4 In the District Court of the United States for the Northern  
District of California.  
In Admiralty.  
S. H. HARMON LUMBER Co., Libellant, }  
*vs.*  
STEAM TUG "WARRICR," Respondent. }

### LIBELLANT'S ASSIGNMENTS OF ERRORS.

Libellant assigns as errors in the judgment and decision of the Court the following:

1st. That on the testimony judgment should have been given for libellant.

2nd. The testimony shows that the draft of the Sailor Boy was fourteen feet six inches and no more at the time of the disaster, and the decision of the Court is directly contrary to the testimony.

3rd. The testimony shows that the disaster occurred solely by fault of the steam tug Warrior, and the decision of the Court is directly contrary to the testimony.

4th. The testimony shows that the Warrior attempted to tow the Sailor Boy on an ebb tide, and the decision of the Court is in face of the testimony.\*

5 . 5th. The testimony shows that the disaster was occasioned either by the fact that there was not sufficient water on the bar to tow in a vessel drawing 14 ft. 6 inches, or by the fact that the tug did not keep her tow in the Channel, and the decision is contrary to the testimony.

6th. The testimony shows that the disaster was solely the result of the negligence of the tug Warrior, and the decision is contrary to the testimony.

E. W. MCGRAW,  
*Proctor for Libellant.*

[Endorsed:] Filed May 18th, 1892.

SOUTHARD HOFFMAN, *Clerk.\**

6 UNITED STATES OF AMERICA.  
District Court of the United States of America, for the North-  
ern District of California.  
In Admiralty.

S. H. HARMON LUMBER Co., (a corporation), J. M. Weatherwax, }  
S. H. Harmon, E. N. Harmon, Wm. Kieth, Henry Johnson, }  
Geo. M. Mitchell, Jas. Sennett and L. Mausur, Libellant. }  
*vs.*  
STEAM TUG "WARRIOR," her tackle, apparel and furniture. }

*To the Honorable Ojden Hoffman, Judge of the District Court of the United States for the Northern District of California:*

### THE LIBEL OF

The S. H. Harmon Lumber Co., a corporation duly organized and existing under the laws of the State of California, J. M. Weatherwax, S. H. Harmon, E. N. Harmon, Wm. Kieth, Henry Johnson, Geo. M. Mitchell, Jas. Sennett and L. Mausur against the steam tug "Warrior", her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of Damage, civil and maritime, alleges:\*

#### I.

7 That these libellants are, and were at all the times hereinafter mentioned, the sole owners of the schooner "Sailor Boy".

#### II.

That on or about the day of December, 1887, the said schooner "Sailor Boy", laden with a cargo of lumber, sailed from Grays Harbor in Washington Territory, bound to the port of San Pedro, in the State of California.

#### III.

And these libellants on their information and belief further aver: That on or about the 5th day of January, 1888, the said schooner duly arrived off the bar, and before the entrance of the said harbor of San Pedro, when and where she was safely anchored.

That thereafter on the same day, the master of the said schooner then and there standing in need of a tug boat to tow said schooner from her said anchorage into the harbor of San Pedro, made and entered into a contract with the master of the steam tug Warrior by which the master of said tug, in consideration of the sum of about \$73.60 to be paid to him, the master of said tug, by the master of said schooner, contracted and agreed with the master of said schooner to make fast to said schooner and to safely tow her over the bar at the entrance of said harbor, and to bring her to a safe place of anchorage or mooring in the same;\*

8 That at the time of making said contract, and before said tug entered upon the performance of the same, the master of said schooner, on the request of the master of said tug, informed the latter of the draught of said schooner, which was then and there fourteen and one-half feet and no more; at the same time asking the master of said tug if he could tow said schooner into said harbor on the then prevailing tide, and was thereupon informed by said master that he could so do;

And these libellants further on their information and belief aver, that shortly after the making of the aforesaid contract, the master of said tug made fast the hawser of the said tug to said schooner, and commenced to tow her over said bar and into said harbor;

That while doing so the said tug, by reason of the shallowness of the water on said bar, and the inefficiency of its depths, caused by a low and ebbing tide, to allow a vessel drawing fourteen and one-

half feet of water to pass over the same; said schooner was towed on said bar, where she commenced pounding and thumping, and lost her steerageway, and drifted on a rocky point known as Dead Man's Island, where she remained thumping and pounding for a space of about forty-five minutes;

That thereupon through the negligence and unskillfulness of the master of the said tug Warrior the tow line then fast from said tug to said schooner, Sailor Boy, parted, whereupon said schooner drifted further out of the channel onto said point known as Dead Man's Island, and was still so drifting when the steam tug Falcon having come to the assistance \* of said schooner and said tug

Warrior, the said schooner was towed from the place where  
9 she was then situate to a place known as the inner bar, where said schooner was compelled to lay aground for several hours, and was thereafter towed by said tugs to a place of moling in said harbor of San Pedro;

That by reason of said stranding said schooner was caused to leak, and she commenced leaking, and it became necessary for the master thereof to employ, and he did employ four extra men to pump the water from the hold of said schooner.

#### IV.

And these libellants on their information and belief aver that the stranding of said schooner on said bar, while in tow by said tug Warrior, was brought about solely by the negligence, carelessness and unskillfulness of the master thereof in attempting to tow said schooner over said bar when the depth of the water was not sufficient for a vessel of the then draught of said schooner, to wit, fourteen and one-half feet, to pass over the same in safety.

#### V.

And your libellants further aver that in consequence of the stranding of said schooner on said bar by the negligence, carelessness and unskillfulness of the master of said tug aforesaid, the said schooner was greatly damaged, and that the cost of repairing the injury done to the same was and is the sum of \$3072.13.\*

#### VI.

10 And your libellants further aver that in consequence of the loss of the use of said vessel during the time necessarily occupied in making said repairs, and otherwise, and in the employment of extra hands to keep the schooner clear of water, they have sustained further damages in the sum of \$637.50.

#### VII.

And these libellants further aver that the said steam tug Warrior is now in the harbor of San Francisco, and within the jurisdiction of this Honorable Court.

#### VIII.

That all and singular the premises are true, and within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court.

Wherefore libellants pray that process in due form of law according to the course of this Honorable Court, in causes of Admiralty and Maritime jurisdiction, may issue against the said steam tug Warrior, her tackle, apparel and furniture, and that all persons claiming any right or interest therein, may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the sum of \$3709.63, the damages aforesaid, with costs, and that the said steam tug Warrior, her tackle, apparel and furniture, be condemned and sold to pay the same, and that these libellants have such other and fur\*ther relief in the premises as in law and justice they  
11 may be entitled to receive.

E. N. HARMON.

HENRY ACH,

*Proctor for Libellants.*

DISTRICT OF CALIFORNIA—SS

Subscribed and sworn to before me this 3rd day of April, A. D.,  
1888. J. S. MANLEY,

*Commissioner U. S. Circuit Court, Northern District of California.*

[Endorsed:] Filed April 3rd, 1888.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.\**

12 No. 5565.

UNITED STATES OF AMERICA.

District Court of the United States for the Northern District of California.

Whereas, a libel was filed in this Court on the 3d day of April in the year of our Lord one thousand eight hundred and eighty-eight, by S. H. Harmon Lumber Co. *et als.* against the steam tug Warrior etc., for reasons and causes in the said libel mentioned, and the said S. H. Harmon Lumber Co. *et als.* and C. C. Rohlffs and N. T. James his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellants or his sureties, execution may issue against their goods, chattels and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellants above-named shall pay all costs and charges that may be awarded against them in any decree by this Court, or, in case of appeal, by the appellate Court.

E. N. HARMON,

C. C. ROHLFFS,

N. T. JAMES.

Taken and acknowledged this 3rd day of April, 1888, before me.

J. S. MANLEY,

*Commissioner United States Circuit Court, Northern District of California.\**

13 NORTHERN DISTRICT OF CALIFORNIA—SS.

C. C. Rohlfss and N. T. James, parties to the above Stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his debts and liabilities.

C. C. ROHLFFS,  
N. T. JAMES.

Sworn to this 3rd day of April, 1888, before me.

J. S. MANLEY,

*Commissioner United States Circuit Court, Northern District of California.*

Filed this 3rd day of April, 1888.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.* \*

14

UNITED STATES OF AMERICA.

District Court of the United States of America, District of California.

In Admiralty.

S. H. HARMON LUMBER CO., (a Corporation), et al., Libellants, }  
vs.

STEAM TUG "WARRIOR," her tackle, apparel and furniture. }

*To the Honorable Ogden Hoffman, Judge of the District Court of the United States for the District of California:*

The claim of the Wilmington Transportation Company, a corporation existing under the laws of the State of California, to the steam tug "Warrior," her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the District of California, at the suit of S. H. Harmon Lumber Co. et al. alleges:

That the said Wilmington Transportation Co. is owner of the said steam tug "Warrior," her tackle, apparel and furniture, and that no other person is owner thereof.

Wherefore, the claimant prays that this Honorable Court will be pleased to decree a restitution of the same to it, to \* and otherwise right and justice to administer on the premises.

15

WILMINGTON TRANSPORTATION COMPANY,

By JAS. W. SIMMIE, Master and Agent.

DISTRICT OF CALIFORNIA—SS.

James W. Simmie, being duly sworn, says that he was and is the master of the steam tug "Warrior", and that at the time of said arrest thereof he was in possession of the same as the lawful bailee for said owner, and that said corporation owner has its office at San Pedro, and all its officials there, and more than 100 miles from this City and County of San Francisco.

JAMES W. SIMMIE.

Sworn to before me this 3rd day of April, A. D. 1888.

J. S. MANLEY,

*Commissioner U. S. Circuit Court, Nn. Dist. of Cal.*

[Endorsed:] Filed April 3rd, A. D. 1888.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.* \*

16

No. 5566.

UNITED STATES OF AMERICA.

District Court of the United States for the Northern District of California.

Whereas, a libel was filed in this Court on the 3rd day of April in the year of our Lord one thousand eight hundred and eighty-eight by S. H. Harmon Lumber Co. et. al. against the steam tug "Warrior" her tackle, etc., for reasons and causes in the said libel mentioned, and whereas, said steam tug "Warrior" her tackle, etc., has been claimed by the Wilmington Transportation Company and the said Wilmington Transportation Company and Robt. G. Byxbee and Dan'l E. Hayes his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said Claimant or his sureties, execution may issue against their goods, chattels and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the Claimant above-named shall pay all costs and charges that may be awarded against them in any decree by this Court, or, in case of appeal, by the appellate Court.

WILMINGTON TRANSPORTATION COMPANY,  
By JAS. W. SIMMIE, Master and Agt.  
ROBT. G. BYXBEE,  
DANIEL E. HAYES.

Taken and acknowledged this 3rd day of April, 1888, before me.

J. S. MANLEY,

*Commissioner United States Circuit\* Court, Northern District of California.*

17 NORTHERN DISTRICT OF CALIFORNIA—SS.

Robt. C. Byxbee and Dan'l E. Hayes, parties to the above Stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his debts and liabilities.

ROBT. G. BYXBEE.  
DANIEL E. HAYES.

Sworn to this 3 day of April, 1888, before me,

J. S. MANLEY,

*Commissioner United States Circuit Court, Northern District of California.*

Filed the 3 day of April, 1888.

SOUTHARD HOFFMAN, Clerk.

By J. S. MANLEY, Deputy Clerk. \*

18 NORTHERN DISTRICT OF CALIFORNIA—SS.

*The President of the United States of America, to the Marshal of the United States for the Northern District of California, Greeting:*

[SEAL.] Whereas, a libel hath been filed in the District Court of the United States for the Northern District of California, on the third day of April in the year of our Lord one thousand eight hundred and eighty-eight by S. H. Harmon Lumber Co., a corporation,

J. M. Weatherwax, S. H. Harmon, E. N. Harmon, Wm. Kieth, Henry Johnson, Geo. M. Mitchell, Jas. Sennett and L. Mauser, against the steam tug "Warrior," her tackle, apparel and furniture, etc., for the reasons and causes in the said Libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steam tug, etc., or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steam tug, etc., or vessel, her tackle, etc., may for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libellant.

You are therefore hereby commanded to attach the said steam tug etc., or vessel, her tackle, etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the \* same, or knowing or having anything to say why the same should not be  
 19 condemned and sold pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Northern District of California, on the 17th day of April, A. D. 1888, at eleven o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Hon. OGDEN HOFFMAN, Judge of said Court, at the city of San Francisco, in the Northern District of California, this 3rd day of April in the year of our Lord one thousand eight hundred and eighty-eight and of our independence the one hundred and twelfth.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.*

HENRY ACH,

*Proctor for Libellants.*

[Endorsed:] In obedience to the within monition, I attached the steam tug "Warrior" therein described, on the 3rd day of April and have given due notice to all persons claiming the same that this Court will, on the 17th day of April, (if that \* day should be a day  
 20 of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

J. C. FRANKS, *U. S. Marshal.*

By JAMES R. DEANE, *Deputy Marshal.*

Dated 3rd April, 1888.

Filed April 17th, 1888.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk. \**

21 At a stated term of the District Court of the United States of America, for the Northern District of California, held at the courtroom, in the City of San Francisco, on Tuesday, the 17th day of

April, in the year of our Lord one thousand eight hundred and eighty-eight.

Present:

The Honorable OGDEN HOFFMAN, Judge.

S. H. HARMON LUMBER COMPANY, et als.

vs.

THE STEAM TUG "WARRIOR," her tackle, apparel, etc.

} No. 5566.

The United States Marshal having returned upon the motion that he has attached the said steam tug "Warrior," etc., on motion of Henry Ach, proctor for the libellants, it is ordered that proclamation be made. Proclamation was thereupon duly made and on motion of Charles Page, Esqr., proctor for the claimants, it is ordered that the claimants have five days to answer herein. \*

22

UNITED STATES OF AMERICA.

District Court of the United States of America, for the Northern District of California.

In Admiralty.

S. H. HARMON LUMBER CO., (a corporation) J. M. Weatherwax, }  
 S. H. Harmon, E. N. Harmon, Wm. Kieth, Henry Johnson, }  
 Geo. M. Mitchell, Joseph Sennett and L. Mansur, Libellant, }

vs.

STEAM TUG "WARRIOR," her tackle, apparel and furniture.

To the Honorable Ogden Hoffman, Judge of the District Court of the United States for the Northern District of California:

THE ANSWER OF

The Wilmington Transportation Company, the claimant in the above-entitled suit to the libel of the S. H. Harmon Lumber Co., and others, libellants in the above-entitled cause, respectfully shows to the Court as follows:

I.

Answering unto the First and Second Articles in said libel, this respondent admits the allegations therein.

II.

23 Answering unto the Third Article in said libel, this respondent admits the arrival of the said schooner in said libel \* mentioned, at San Pedro, and admits the making of the contract, in said libel alleged, with the steam tug "Warrior" for the towage of said schooner over the said bar, excepting: That it denies that the said tug agreed with the said schooner to safely tow her over the said bar or otherwise than to tow her with due diligence and skill.

The respondent admits that at the time of the making of said contract, the master of the said schooner gave the draft thereof to the master of said tug boat at fourteen and one-half (14½) feet and no more. And admits that the master of said tug boat stated at the said time that he could tow her over the bar with the then prevailing tide.

And this respondent avers, on information and belief, that the said draft of fourteen and one-half ( $14\frac{1}{2}$ ) feet, given by the master of said schooner to said tug, was false and erroneous, and that said draft of said schooner was in excess of fifteen (15) feet.

And this respondent further admits that shortly after making said contract, the said tugboat made fast its hawser to said schooner and commenced to tow her over the said bar and into the said harbor.

It further admits that while so doing, the said schooner touched and struck upon said bar, and lost her steerage way and drifted on to the point known as Dead Man's Island;

And it further admits that the same was caused by reason of the shallowness of the water on said bar, and the insufficiency of its depth to allow said vessel to pass over the same; \*  
 24 but it denies that the said shallowness was caused by a low and ebbing tide or the said water on said bar was too shallow, or that it was insufficient to allow a schooner or vessel drawing fourteen and one-half ( $14\frac{1}{2}$ ) feet of water to pass over the same, and it alleges, on information and belief, that the said schooner was, at the said time, drawing more than fourteen and one-half ( $14\frac{1}{2}$ ) feet of water, and that the said touching and striking of said schooner upon said bar was caused entirely by the fact that the said schooner was drawing more than the said depth of water, and too much depth of water to allow of her being safely carried over the bar. This respondent further denies, on information and belief, that thereupon, through the negligence or unskillfulness of the master of said tugboat, the tow-line then fast from the said tug to said schooner parted, or that the said schooner drifted further out of the channel on to said Point, known as Dead Man's Island, through any negligence or unskillfulness of the said tugboat, or of those on board of the same, but this respondent admits that while drifting on the said bar, the said schooner drifted toward and on Dead Man's Island, and that she so drifted until the steam tug Falcon came to the assistance of said tug-boat and said schooner, and that she was then towed from the said Island, named above, to a place in the said Harbor of San Pedro.

The respondent avers that it is ignorant whether or not, or to what extent the said schooner was caused to leak by said stranding, or whether or not it became necessary for the mas\*ter thereof  
 25 to employ, or whether he did employ, four extra men to pump the water from the hold of the said schooner. Wherefore the respondent denies the said allegations and calls for proof thereof.

### III.

This respondent, on its information and belief, denies that the stranding of said schooner on said bar while in tow of said tugboat "Warrior" was brought about solely, or in any degree by the negligence, carelessness or unskillfulness of the master thereof in attempting to tow the said schooner over the said bar when the depth was not sufficient for a vessel of the then draft of the said schooner.

This respondent avers that the act of said master of said tugboat

in towing said schooner over the said bar when the depth of the water was not sufficient for the draft of said schooner was caused entirely by the fact that the master of said schooner, on being asked his draft, gave the same as fourteen and one-half ( $14\frac{1}{2}$ ) feet, whereas in truth, the draft of said schooner was much greater than that amount. That the water on said bar at the time said schooner was taken over, was, by careful measurement, ascertained by the master of said tugboat prior to taking hold of said schooner to be amply sufficient to take over a vessel of fourteen and one-half ( $14\frac{1}{2}$ ) feet draft, and that if said schooner had been drawing fourteen and one-half ( $14\frac{1}{2}$ ) feet, she would have been taken over the bar in safety by said tug. \*

26 And this respondent, on its information and belief, avers that the draft of said schooner at the time that the said tugboat attempted to take her over the said bar was more than fifteen feet, and that the statement of said master of said schooner in giving the said draft as fourteen and one-half ( $14\frac{1}{2}$ ) feet, was erroneous and false.

## IV.

The respondent, on its information and belief, further denies that, in consequence of the stranding of the said schooner on the said bar by the negligence, carelessness or unskillfulness of the master of said tug, the said schooner was greatly damaged, or that the said schooner was damaged at all by reason of any act of negligence, carelessness or unskillfulness of the said master of said tug. This respondent avers that it is ignorant whether or not the damage done to said schooner was the sum of three thousand and seventy-two (\$3,072) dollars and thirteen (13) cents, so that it cannot admit or deny the allegations in the libel in said regard, wherefore it calls for proof thereof.

## V.

Answering unto this, respondent avers that as to the allegations in the Sixth Article of said libel, it is ignorant of all and singular the matters therein stated, so that it can neither admit or deny the same, wherefore it calls for proof thereof. \*

27

## VI.

Answering unto the Seventh and Eighth Articles in said libel, this respondent admits the allegations therein.

Wherefore, this respondent prays that said libel be dismissed and for its costs.

WILMINGTON TRANSPORTATION CO.  
By WILLIAM BANNING, *Manager*.

PAGE & EELS,  
*Proctors.*

STATE OF CALIFORNIA. }  
City and County of San Francisco. } ss.

William Banning being duly sworn, deposes and says: That he is the manager of the corporation claimant in the above-entitled cause; that he has heard read the foregoing answer and knows the

contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and that as to these matters he believes it to be true.

WILLIAM BANNING.

Subscribed and sworn to before me this 23rd day of April, 1888.

[SEAL]

ROBT. N. BULLA, *Notary Public.*

[Endorsed]: Filed April 26th, 1882.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.* \*

28 In the District of the United States for the Northern District of California.

S. H. HARMON LUMBER CO., et al., }

*vs.*

STEAM TUG "WARRIOR." }

I hereby consent that E. W. McGraw be substituted for me as proctor for libellants in above-entitled cause.

HENRY ACH,

J. M. ROTHCHILD,

*Proctors for Libellants.*

The libellants in above-entitled case desire that E. W. McGraw be substituted as their proctor in said cause.

S. H. HARMON L. CO.

Per E. N. HARMON; *Sec'y for Libellants.*

[Endorsed:] Filed November 25th, 1890.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.* \*

29 At a stated term of the District Court of the United States of America, for the Northern District of California, held at the court room, in the city of San Francisco, on Monday, the 24th day of August, in the year of our Lord one thousand eight hundred and ninety-one.

Present:

The Honorable E. M. ROSS, U. S. District Judge for the Southern District of California, presiding.

THE S. H. HARMON LUMBER CO. }

*vs.*

THE STEAM TUG WARRIOR, ETC. }

No. 5566.

This cause this day came on regularly for hearing, E. W. McGraw Esqr. appearing as proctor for the libellant and Charles Page Esqr. as proctor for the claimants. By agreement of the proctors for the respective parties it is ordered that the depositions of Edward Jahnson, H. Johnson, S. C. Mitchell, Hans Madsen, H. Dahllof, H. Johnson, D. W. Weldt and Levi Hannah be published and filed. Mr. McGraw stated the case on behalf of the libellant to the Court and called R. J. Brown who was duly sworn and examined as a witness on behalf of the libellant and introduced in evidence the deposition of Levi Hannah, D. W. Weldt, H. Dahllof, Henry Johnson, Hans Madsen, Henry Johnson, S. C. Mitchell and Ed. Johnson and rested.

Mr. Page stated the case to the Court on behalf of the Claimant, and introduced in evidence the depositions of C. F. Hall and John P. Melburg, and called Wm. Barce, J. W. Simmie, Otto Von Geldern, who were duly sworn and examined as witnesses on behalf of the Claimants and rested. The cause was then submitted to the Court for consideration and decision on briefs to be filed six and five.\*

30 In the District Court of the United States in and for the Northern District of California.

The HON. E. M. ROSS, Judge.

(Title of Cause.)

- TESTIMONY.

Monday, August 24, 1891.

APPEARANCES:

E. W. MCGRAW, Esq., appeared for the Libellant.

MESSRS. PAGE & EELLS, appeared for the Claimant.

R. J. BROWN, called for the Libellant, sworn.

MR. MCGRAW—Q. Mr. Brown, in January, 1888, where were you living and what was your business? A. I was living in San Pedro, and my business was that of foreman of the Kirkhoff, Cousins Lumber Co. at San Pedro.

Q. Do you recollect the tug "Warrior" towing the schooner ashore, the "Reporter"? A. I recollect the occasion, the time.

Q. You recollect the occasion, do you? A. Yes, sir.

Q. Did you see that occurrence? A. Yes, sir.\*

31 Q. Where were you at that time? A. I was standing on the wharf of the Kirkhoff, Cousins Lumber Co.

Q. On the wharf of the Company of which you are foreman? A. Yes, sir.

Q. Did you see the schooner "Reporter" come in? A. Yes, sir, she was towed in; she did not sail in.

Q. Were you on the wharf when she came in? A. Yes, sir.

Q. What time is given for lunch on that wharf? A. One hour.

Q. Between what hours is lunch taken? A. Between twelve and one.

Q. At one o'clock were you there on the wharf? A. Yes, sir.

Q. Then continuously on during that afternoon? A. Yes, sir.

Q. You say you saw the "Reporter" come in? A. Yes, sir.

Q. How long before the "Reporter" came in after lunch? A. It was something over an hour, about a quarter past two, something like that.

Q. Something after two when the "Reporter" came in? A. It might have been a few minutes before or a few minutes after; I believe we were there fully an hour.

Q. State whether or not you are accustomed to watch the tides?

A. Yes, sir; of course we know them.\*

32 Q. And it is your business to know them? A. No, sir; it is not our business to know them, but we always watch them

on account of the vessels towing in, and we know that they can only tow at high tide.

Q. Was the "Sailor Boy" consigned to your wharf? A. Yes, sir.

Q. You say the "Reporter" was towed in by the tug. Did the tug take her clear up to the wharf where she was to lie? A. No, sir; I think she dropped her right abreast of the Railroad Wharf; it was above our place.

Q. Towards the sea or away from the sea? A. Towards the sea.

Q. It was nearer the sea than you were? A. Yes, sir.

Q. How far below your wharf is the Railroad Wharf? A. It must be something like a block or two.

Q. One or two other wharves intervene? A. There is one wharf, the Perrimonte Lumber Wharf, a Company at that place there, and the Railroad Company also.

Q. This Company's wharf would run out and then further up is the San Pedro wharf? A. Yes, sir.

Q. That is the wharf where the "Reporter" was discharged? A. Yes, sir.

Q. The tug let go of the "Reporter" somewhere about the "Railroad Wharf"? A. Yes, sir; right abreast of the Railroad Wharf, about half way up.

Q. What did the "Reporter" do then? A. They let go half way up the wharf, between the one and the other.\*

33 Q. How could the "Reporter" get to the wharf that she was discharged at? A. She had headway; they generally pull them in pretty lively, and the headway puts them right in.

Q. Did you notice how the tide was at the time the "Reporter" came in? A. I think it was just high water; neither running one way or the other as near as I can remember.

Q. After the "Reporter" came in the tug went out to the "Sailor Boy" did she? A. Yes, sir.

Q. How long after the "Reporter" came in, in your estimation, was it before the "Sailor Boy" struck? A. I could not tell exactly. It is quite a run outside; to get outside around the bar you have to go quite a way. I should judge you would have to run a half or three quarters of an hour fully; they did that.

Q. After the "Reporter" was in? A. Yes, sir.

Q. When the "Sailor Boy" struck, how was the tide then? A. I think from the looks the tide must have been running out or just about turning.

Q. I mean when the "Sailor Boy" struck? A. The tide must have been ebbing the least bit, so that it wouldn't amount to much, turning the sloops and yachts, just turning on the ebb; they were neither headed one way or the other.

Q. How was the tide when the "Reporter" came in? A. I think it was just tip-top high water

Q. Three-quarters of an hour after that how was the tide? \* A. I only judge it from the run, the distance it would take the  
34 tug to go out, run out, and make fast, and pull in again. That is the reason I think the tide was ebbing a little bit.

Q. Is it not the custom to watch the tide gauge? A. I don't know as they had a tide gauge; we could tell the tide by watching it just how much water there was on the bar always.

Q. Were you present when the measurements of the draught of the "Sailor Boy" were made? A. I was down there, yes, sir.

Q. What was done and said by Captain Lelburg? A. Captain Pete, that is the only name I know him by.

Q. He was Captain of the tug? A. Yes, sir.

Q. What tug was it? A. The tug "Warrior."

Q. What was done and said then? A. There was some difference. I think the Captain claimed—the Captain of the tug "Warrior" claimed—that the Captain of the schooner "Sailor Boy" misrepresented his draught six inches; and Captain Peter said he was going to have it measured. They did have it measured, and they found the draught was right according as the Captain of the "Sailor Boy" said. That was the dispute in the first place, there was a difference of six inches in the draught. The Captain claimed he drew 14—6, I believe, or something like that, and the other Captain claimed he drew more.

Q. Was there any tar or oil in that harbor which leaves water marks on a vessel? \* A. It is not exactly that; at the wharf  
35 I am working at the Company has a steam schooner, and runs up oil there, and they pump it from the car tanks to the vessel, and a certain amount of that spills of course. I don't know whether there were any vessels around there at that time, right around our wharf, or whether or not it would stay on the water.

Q. When the "Sailor Boy" came into that wharf she had a good deal of water, did she not? A. From the way the pumps were working I should say so; I couldn't get down in the hold.

*Cross Examination.*

MR. PAGE—Q. Had you a chance to notice the figures on the side of the "Sailor Boy"? A. There is none on the side.

Q. Well, on the rudder part? A. No, sir; the figures were below the water.

Q. How did they measure the draught? You say Captain Pete and somebody else measured the draught? A. The vessel was discharged. In a day or two after they measured the draught, after the vessel was docked, rather; we worked on her a couple of days; it may have been a day we worked on her.

Q. What did they measure up to? A. They measured the whole business. I happened to be one of them. We came over and after we got through the Captain of the "Sailor Boy" came, and  
36 Captain Peter was there, and I \* think there was two men, I don't know who, but the carpenter was there. Captain Peter says, "I found the thing right." Captain Johnson says, "Yes, I wouldn't misrepresent anything."

Q. Do you mean Captain Johnson told Captain Pete that her actual draught from his knowledge was 14 ft. 6 before he came in? A. That is what is supposed to have been said outside.

Q. Do you know whether that was said by Captain Johnson of your own actual knowledge? A. I know it was said outside for

the reason Capt. Johnson told him "I wouldn't have told you—I wouldn't have misrepresented my draught."

Q. If Captain Johnson did not know what the draught was outside he would not misrepresent anything? A. If he did not know. Of course, I don't know what Captain Johnson said.

Q. You were not present when the actual measurements were taken were you? A. Yes, sir; I was.

Q. Did you go up with them to take the measurements? A. No, sir; I took no part in it, but I was there.

Q. Your recollection now is, that Captain Pete said it was all right? A. Yes, sir.

Q. Are you perfectly sure he said it was all right? A. Yes, sir; I am sure.

Q. Suppose Captain Pete has testified he found the measurements were the other way, and that he was right. Is it possible you are mistaken? A. I can't help whether he testified that was the conversation. \*

37 Q. Will you swear absolutely that was the conversation?

A. I have already sworn absolutely.

Q. That Captain Pete said the vessel drew 14-6? A. I don't know what his acknowledgment was about the draught figures. I don't know what was determined outside. After the vessel was beached she may have become waterlogged and drawn 18 or 20 ft.

Q. But the very question they wanted to determine was what she had drawn outside? A. Yes, sir.

Q. And the Captain of the ship said she drew 14 foot 6? A. Yes, sir; that was outside.

Q. Did Captain Pete say he had found the result of their examination ashore was she had drawn 14 foot 6 outside? A. According to the figures—he claimed the figures were wrong, and the vessel drew six inches more when he took hold than Captain Johnson represented.

Q. That the figures on the rudder-post were wrong? A. He did not mention any figures. He said "you misrepresented your draught, if it was so much, I could have towed you fine."

Q. Did he say that before the measurements or after? A. They were having this talk after the measurements.

*Re-direct Examination.*

MR. MCGRAW—Q. You say they found the measurements right? A. Yes, sir; that was the time Captain Johnson—that Captain Pete acknowledged it was right. He said he thought it was \* six inches more; and Captain Johnson said he wouldn't represent anything wrong.

38 Q. When you say the tide ebbed a little, how many inches would you call a little? A. I don't know what you call a little, I don't know how much it would take to turn those sloops, I never gauged that.

Q. You don't know whether it was five or six inches, or two or three? A. I could only judge that it was running out some little while, a half an hour, about that time.

*Re-cross Examination.*

MR. PAGE—Q. Your idea was the tide had not run out but a very short time? A. About half an hour or so, and then afterwards the “Sailor Boy” was beached.

Q. Could you see the “Sailor Boy” when she was beached? A. Yes, sir; just about.

Q. Could you see the bar from where you are? A. No, sir. There is water over the bar, but I could see about the location of the bar.

Q. How can you tell whether a vessel is on the bar or off the bar? A. I can tell by her movements, and the sound; she couldn't move at all.

Q. Could you see the hull of the vessel? A. Yes, sir.

Q. Did you say a moment ago the tide was running out a half hour when the “Sailor Boy” struck? \* A. Yes, sir; I should judge so. The boats in the bay and the sloops had turned.

Q. The movement of the tide was scarcely perceptible? A. Yes, sir; that is the idea.

Q. It was slack water a half an hour after the tide ebbed? A. Yes, sir; it would be ebb tide.

Q. Is not the first half hour after the high tide is reached, and the ebb begins called slack water? A. I don't know enough about sea-faring business to say that.

MR. MCGRAW—Q. All the sloops and craft in the stream were turned down stream?

MR. PAGE—The witness did not say that. Do not put words into his mouth.

MR. MCGRAW—Q. How were the sloops and small craft in the stream turned when the “Sailor Boy” struck? A. They had turned with the tide. They had just about half turned. They had the head tide, of course that would turn them.

Q. How were they lying when the “Reporter” came in? A. It was just about tip-top high water, and they were lying up then. I should judge they had turned around about half an hour when the “Sailor Boy” struck.

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MR. MCGRAW—I will offer in evidence the depositions of Levi Hanna, E. W. Bennett, Harmon Dallof, H. J. Johnson, of which there are two: Hans Madsen, S. C. Mitchell and Ed. Johnson.

MR. PAGE—I will offer in evidence the depositions of Captain Mulberg and Captain Hall.\*

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40 Deposition of LEVI HANNAH on behalf of Libellants.

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Taken and sworn to before GEO. T. KNOX, a Notary Public in and for the City and County of San Francisco, State of California, at No. 318 California street, in the City of San Francisco, on the 17th day of February, 1891.

## COUNSEL APPEARING:

For Libellants, E. W. MCGRAW, Esq,  
For Respondents, CHARLES PAGE, Esq.

## DEPOSITION OF LEVI HANNAH.

By MR. MCGRAW: Q. What is your name, age and occupation?  
A. Levi Hannah, age 55, sea-faring man.

Q. On January 5th, 1888, what was your occupation? A. Master of the steamer "Eureka".

Q. Where were you on that day? A. I was standing on the railroad wharf at San Pedro.

Q. Did you see the tug "Warrior" attempt to tow the schooner "Sailor Boy" over the San Pedro bar? A. Yes, sir.\*

41 Q. Did you see the "Sailor Boy" when she struck on the bar? A. Yes, sir.

Q. Do you know what the condition of the tide was at the time the "Sailor Boy" struck? A. It was the first of the ebb tide; the tide was running out at the time.

Q. Do you know how much the tide had lowered from high water? A. No, sir, I do not.

Q. Do you remember at about what time it was that the "Sailor Boy" struck? A. I think it was about 2:30, some time around there. It might have been a little later, I don't know.

Q. (By MR. PAGE) What were you doing, Captain, at the time you were on San Pedro wharf? A. Nothing in particular, only watching that schooner.

Q. From what did you judge that the tide was ebbing? A. I looked at the gauge. We have a tide gauge there on the wharf.

Q. Is there anything that you now remember which calls your attention particularly to the hour of half past two, when you say the schooner struck? A. No, I don't know that there is. That is as near as my recollection of half past two.

Q. Do you remember how the water was at that day, whether it was a rough day, or a fine day? A. It was a rough day.\*

42 Q. Was there any wind? A. I think the wind was southeast. I am not sure about that, though. It was from the southeast or somewhere from the southard.

Q. What did the steamer "Eureka" draw when she went over the bar at San Pedro? A. I am not sure about that. Sometimes she drew more and sometimes less. I think about 13 feet, at that time.

By MR. MCGRAW—Q. What steamer are you on now, Captain?  
A. On the "Los Angeles" now.

Q. Master of it? A. Yes, sir.

Q. When do you expect to leave this port? A. To-morrow morning at 9 o'clock.

L. HANNAH.

[Endorsed:] Published and filed August 24th, 1891.

SOUTHARD HOFFMAN, Clerk.

By J. S. MANLEY, Deputy Clerk.\*

## 43 Deposition of D. W. WELDT taken on behalf of Libellants.

Taken and sworn to by GFO. T. KNOX, a Notary Public in and for the City and County of San Francisco, State of California, at No. 318 California street, in said City and County of San Francisco, State of California, on the 11th day of February, 1891.

## COUNSEL APPEARING:

For Libellants, E. W. MCGRAW, Esq.

For Respondents. CHAS. PAGE, Esq.

## DEPOSITION OF D. W. WELDT.

By MR. MCGRAW—Q. What is your occupation, Captain? A. Pilot.

Q. Where? A. San Pedro.

Q. How long have you been pilot there? About nine years licensed pilot.

Q. Do you know the steam tug "Warrior" A. Yes, sir.

Q. Do you know the schooner "Sailor Boy." A. Yes, sir.\*

44 Q. Do you remember seeing the schooner "Sailor Boy" at San Pedro on the 5th day of January, 1888. A. Yes, sir.

Q. Did you see the tug "Warrior" attempt to tow her in? A. Yes, sir.

Q. Did you see her when she struck? A. Yes, sir.

Q. Where were you at the time when she struck? A. Standing on the dock.

Q. What dock? A. The Central Pacific Railroad dock, San Pedro.

Q. How long had you been on that dock at that time? A. As near as I can remember, about three quarters of an hour or an hour.

Q. Did you see the "Reporter" come in? A. Yes, sir.

Q. At the time the "Sailor Boy" struck on the bar, did you notice which way she was heading? A. She was heading west by north.

Q. Do you know what state of tide it was when she struck? A. Yes, sir.

Q. What was the state of the tide? A. Ebb.

Q. Do you know how much the tide had lowered since it was high water? A. Between five and six inches, as near as I can remember.

Q. What means of information had you as to the amount the tide had run out? A. Tide gauge.\*

45 Q. Was there a tide gauge near where you were standing? A. Yes, sir; two of them.

Q. How were they situated? and where? A. Situated, one on the railroad dock and the other under the wharf at the steps.

Q. Which one did you examine? A. Both of them.

Q. Any other persons with you on the wharf when the sailor boy struck? A. Yes, sir.

Q. Who were they? A. Capt. Hannah, Capt. Johnson, and I believe there were some one else, but I don't just remember who they were.

Q. What vessels were they the captains of? A. Captain Hannah, I think, had the steamer Eureka, and Capt. Johnson had the steamer Alcatraz.

Q. Do you know what time it was high tide at San Pedro that day? A. Yes, sir; I have an idea about what time it was.

Q. What time was it high tide? A. According to the United States Coasters' almanac it would be about 2:12.

Q. Standard time or local time? A. Standard time; the 120th meridian.

Q. That is the time they keep their watches and clocks down there? A. Yes, sir. \*

46 Q. When the tide turns at San Pedro, state whether it lowers quickly or runs out slowly at the start? A. That is owing to the height of the tide. If it is a big tide it runs much faster the first of the ebb.

Q. Do you know what the rise in the tide was that,—that afternoon? A. Yes, sir.

Q. What was it? A. 4 ft. 2.

Q. 4 ft. 2 at San Diego or San Pedro? A. San Diego.

Q. I believe you deduct the 2 for San Pedro, don't you. A. Yes, sir.

Q. With a tide of that kind, how fast would the ebb make. A. It would run out quite brisk after the first half hour.

Q. Do you remember what time it was, or about what time it was when the Sailor Boy struck? A. Well, my recollection was that it was about fifteen or twenty minutes of three.

Q. Any circumstance fixes the time in your mind? A. Yes, sir.

Q. What was it? A. I had orders to go to Los Angeles that afternoon, on the 3 o'clock train and I got left; didn't go away on it.

Q. What was the cause of your getting left? A. Because I was interested in the schooner towing in.

47 Q. Do you mean you had any money interest, or only interest as a seaman? \* A. There were three or four of us shipmasters together, and we were talking about the stage at the time and the condition of the vessel. I had no money interest in it. I was interested as a shipmaster would be in the condition of the vessel and the tide.

Q. At high tide that day what was the depth of water on the outer bar. A. About 14 feet 8, or 15 feet.

Q. How was the sea at the time the Sailor Boy struck? A. Quite rough.

Q. Considering the condition of the sea, how much water would it be necessary to have on the bar to safely tow in a vessel drawing 14 and  $\frac{1}{2}$  feet? A. To safely tow in she should have sixteen feet or more, when it was so rough on the bar.

Q. It requires more water when the bar is rough than when it is smooth, I suppose? A. Yes, sir.

Q. You saw the "Warrior" when she went out to take hold of the "Sailor Boy," did you. A. Yes, sir.

Q. How long would it take her to go from where she left the "Reporter" to where the "Sailor Boy" was? A. About fifteen or twenty minutes.

Q. Going at the speed at which the "Warrior" was going when she went after the "Sailor Boy," could accurate soundings on the bar be taken with a pole from the "Warrior?" \* A. No, sir.

Q. Why not? A. Because when a vessel is going through the water, unless you stop her, before you get your pole up again, the vessel would have gone thirty or forty feet.

Q. How wide is the shallowest spot of that outer bar? A. There is one place that is about 35 or 40 feet wide.

Q. Then a person sounding with a pole might possibly sound on each side of a shallow place? A. Liable to unless they stop her and have leads going on both sides.

Q. Have you sounded that bar often? A. Many times.

Q. What time is necessary to make an accurate examination of the bar? A. From the inner bar to the outer bar it generally takes me an hour or an hour and a half. That is, including the outer bar.

Q. Did you notice the condition of the tide when the "Reporter" came in? A. Yes, sir.

Q. What was it? A. It had just started to ebb.

Q. You say you knew the "Sailor Boy;" had she been at San Pedro before? A. Yes, sir.

49 A. More than once before? \* A. I am not positive of being more than once, but I know somewhere in the neighborhood of that.

Q. When she was there before, did she sail in or tow in? A. Towed in.

Q. Do you know what tug took her in? A. No, sir.

#### *Cross-Examination.*

BY MR. PAGE.—Q. On the day of the accident, at what time would the tide be high, according to the local time? A. About 2:28—half past two.

Q. Do you generally allow a difference of about fifteen minutes between that and San Diego? A. Yes, sir.

Q. Was the weather rough during the whole of that day? A. As near as I recollect, it was.

Q. Have you any distinct recollection of it? A. I have.

Q. Did you know the captain of the "Warrior?" A. Yes, sir.

Q. How long had you known him in his capacity as master of that steamer? A. About a year or more.

Q. How long a time after the tide began ebbing on this occasion would it be before the depth of water on the outer bar would be affected? \* A. It would ebb on the outer bar before it would show it on the gauges in the inner harbor.

50 Q. Is there no period which you would call slack water? A. Yes, sir.

Q. During the slack water what would be the difference in the depth of water on the outer bar? A. It would then be as high as the tide raises on the bar at that particular time.

Q. For how long a time? A. That is all owing to the condition of the wind.

Q. On the occasion we are speaking of, can you form an opinion as to the duration of slack water? A. I could not, sir; no ship-master can on this coast form an opinion accurately.

*Re-direct Examination.*

BY MR. MCGRAW.—Q. From where you were standing on the wharf, what, if any, indication of rough water on the bar had you when the "Sailor Boy" struck? A. She rolled and thumped about there so it showed about what the roughness was there at that time.

Q. You are familiar with the chart of San Pedro Harbor, No. 610, printed December 3rd, 1888, are you not? A. Yes, sir.

Q. Do you remember what was the last time prior to the issue of that chart, the United States engineer was down \* there  
51 sounding that other bar? A. It might have been a year and it might have been more; I am not positive. It was about a year, I think.

Q. With reference to the time of this accident to the "Sailor Boy," was it before or after, that time, and about how long before or after? A. Before, and about a year.

Q. Before the "Sailor Boy" struck? A. Yes, sir; the survey was held about a year prior to the time when the "Sailor Boy" struck.

Q. What year was the survey? A. I couldn't swear positively now whether it was 1887, or 1888; it was about a year before.

Q. From your knowledge of the bar of January 5th, 1888, can you tell how nearly correct the markings on this chart 610 are? A. There wouldn't have been much over a couple of inches difference.

W. D. WELDT.

[Endorsed:] Published and filed August 24th, 1889!

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.* \*

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52 Deposition of HARMON DAHLLOF, taken on behalf of the libellant.

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Taken and sworn to before Geo. T. Knox, a notary public, in and for the City and County of San Francisco, State of California, at the office of E. W. McGraw, No. 316 California Street, in the City and County of San Francisco, State of California, on the 13th of November, 1890.

## COUNSEL APPEARING :

For libellant, E. W. McGraw, Esq.  
 For respondent, Chas. Page, Esqr.

## DEPOSITION OF HARMON DAHLLOF.

- BY MR. MCGRAW—Q. What is your name, age and occupation?  
 A. Harmon Dahllof, age 35, occupation seaman.  
 Q. On the 4th of January, 1888, how were you employed? A. Mate of the "Sailor Boy."  
 Q. Were you aboard of her on that day at the time the tug "Warrior" took hold of her and attempted to tow her into San Pedro? A. Yes, sir.  
 53 Q. Did the "Warrior" get her in safe? A. No, sir. \*  
 Q. What happened? A. The keel broke and the schooner sprung a leak.  
 Q. How did the keel happen to break? A. Got on to the rocks.  
 Q. Getting on the rocks where? A. On the south side of Deadman's Island.  
 Q. Do you know where the outer bar is of the San Pedro? A. Yes, sir.  
 Q. Been there before this occurrence, have you? A. Yes, lots of times.  
 Q. Well, state whether the Sailor Bay struck on the outer bar? A. She struck on the entrance of the outside bar.  
 Q. Well, when she struck what happened? A. Well, the second time she struck, the hawser burst.  
 Q. How long was that after the first time she struck? A. About three minutes.  
 Q. When the hawser broke what became of the Sailor Boy? A. Her keel came up first and then she drifted on the rocks.  
 Q. What rocks; at Deadman's Island? A. Yes, sir.  
 Q. State whether she pounded any on the rocks? A. Yes, plenty.  
 Q. How long after she drifted on the rocks was it before the tug got hold of her again? A. About twenty minutes to half an hour.  
 Q. Was there more than one tug assisted in getting her off? A. It took two tugs to get her off.\*  
 54 Q. What other tug besides the Warrior? A. I don't remember the name of the other tug.  
 Q. How did that second tug assist? A. It took a line from the bow of the other tug boat.  
 Q. It didn't make fast to the Sailor Boy? A. Captain Johnson asked him to make fast to our schooner, but he wouldn't have it.  
 Q. When the two tugs started in to work, what did they do with the Sailor Boy? A. They got her off after about an hour and a half towing.  
 Q. Well, then, did they take her up to the wharf at San Pedro? A. No, sir. They towed her in the inside bar.  
 Q. Well, what did they do then? A. They left us there anchored.

Q. Well, when did she get away from there and how? A. At half past one at night.

Q. How did she get away? A. A tug boat came and took her off.

Q. The Warrior? A. Yes, sir.

Q. Then the Warrior towed her over the inside bar up to the wharf at San Pedro, did she? A. Yes, sir.

Q. Have you any idea what time it was when the Sailor Boy first struck on the outer bar? A. Somewheres about fifteen minutes past two.\*

55 Q. How was your time, when did you get your time last?

A. Our schooner's time.

Q. When was that time taken last? A. The day before we came in.

Q. How far west? A. 2 degrees.

Q. Did you look at the time then, or is this merely your estimate?  
A. No, sir; I didn't look at it when she struck.

Q. How long before that had you looked at the clock? A. About twenty minutes.

Q. Did you notice when you struck whether the tide was flood or ebb? A. No, sir.

Q. Do you know now much water the Sailor Boy was drawing at at that time? A. 14 feet, 6 inches.

Q. Were you aboard of her from the time she left San Francisco till she arrived at San Pedro? A. Yes, sir.

Q. You were aboard of her when she loaded at Grey's Harbor?  
A. Yes, sir.

Q. What employment are you in now? A. Master of the schooner San Buenaventura.

Q. Do you expect to leave this port soon? A. I expect to leave Saturday evening or Sunday morning.

Q. Bound where?\* A. Grey's Harbor, and thence back  
56 to San Francisco or Oakland.

*Cross Examination.*

By MR. PAGE—Q. Where did you join the Sailor Boy? A. San Francisco.

Q. Who was her Captain then? A. Captain Johnson.

Q. Where was she lying at San Francisco when you joined her?  
A. Steuart street and Folsom street at the wharf.

Q. From there did you go up to Gray's Harbor? A. Yes, sir.

Q. Where did she lie in Gray's Harbor when she was loading?  
A. Alongside of the mill at the wharf.

Q. Did you take her draught yourself? A. No, sir.

Q. Then the draught you have given was from what somebody else told you? A. I got it from Captain Mitchell.

Q. And that is all you know about the draught? A. Well, the figure showed. I always look at the figures when I am loading a vessel, and I asked Captain Mitchell if the figures were right and he said yes.

Q. Then you read the figure 14 feet on the vessel's rudder post, did you? A. Yes, sir.

Q. Don't you know that one of the figures was not on the rudder post at that time? \* A. They were all there above the water as far as I could see.

57 Q. The figure 14 was there, was it? A. Yes, sir.

Q. Was there any other figures besides that, above 14? A. 15 was there too.

Q. Any other beyond that? A. No, sir.

Q. Which side of the vessel did you examine for the purpose of ascertaining the draught, the side that was along the wharf or the other side? A. We don't take the markings alongside at all.

Q. What do you take? A. Take aft and forward.

Q. Well, what examination do you make for the purpose of ascertaining the draught, where do you look when you take it? A. On her stern or rudder post, we generally find the figures there.

Q. Are the figures on each side of her rudder post? A. No, not that I know of, only aft of the rudder or else on one side.

Q. Well, was that side up against the wharf or was that side looking to the sea when you examined it? A. She had her figures right on her rudder, right aft.

Q. Are the figures on the back of the rudder or on side of rudder? A. Back of the rudder.\*

53 Q. Where did you go for the purpose of examining what her draught was? A. I went up on the wharf.

Q. What were you doing from the time that the tug took hold of her in San Pedro Harbor until you reached the outer bar? A. Heaving up anchor and catting it.

Q. About how long a time were you engaged in that? A. About fifteen minutes.

Q. And previous to that time what had you been doing? A. Standing by for orders.

Q. Is there anything which you remember now which calls your attention to the time when you reached the outer bar? A. No, sir.

Q. What makes you remember that you looked at the clock or that you knew it was two o'clock when you started for the bar? A. I went out to light my pipe when we got through heaving up anchor, and I looked at the clock when I was in the cabin.

Q. Were you not heaving up the anchor as you drifted to the bar? A. The anchor was catted when we drifted to the bar.

*Re-Direct Examination.*

By MR. MCGRAW—Q. When was it you looked at the clock, before or after the tug took hold of you? A. About fifteen or twenty minutes before the tug took hold of us.

Q. What time was it then, do you remember? \* A. About twenty minutes past two, then.

59 Q. Had you heaved your anchor short before the tug took hold of you? A. Yes, it was hanging in the cat-head ready to let go again when it was needed.

Q. Was your anchor in the cat-heads when the tug took hold of you to tow you in the first time, or the second time when she took hold of you to tow you off Deadman's Island, which time was it? A. Before the tug took hold of us the first time.

Q. Where you loaded at Grey's Harbor were you in fresh water or salt water? A. Almost fresh.

Q. Any difference in the draught of the vessel loaded and lying at the wharf in Grey's Harbor than her draught in salt water at San Pedro? A. It makes a difference to three inches.

H. DAHLLOF.\*

60 Deposition of HENRY JOHNSON, taken on behalf of Libellant.

Taken and sworn to before GEO. T. KNOX, a Notary Public in and for the City and County of San Francisco, State of California, at the office of E. W. McGraw, No. 316 California street, in said City and County, on the 13th day of November, 1890.

By MR. MCGRAW—Q. At the time you loaded at Grey's Harbor was Captain Mitchell present? A. Yes, sir.

Q. And his son? A. Yes, sir.

Q. On the 5th of January, 1888, the day when the tug "Warrior" towed you ashore, what time did your clock show, when was your time got? A. It was taken the day before.

Q. How far west were you the day before when you took the time? A. As near as I can remember we were about 2 to the westward.

Q. That would make how much difference in the time? A. 2 would 8 minutes.

Q. After repairs were effected for damages suffered at San \* Pedro, what was the next trip of the Sailor Boy? A. From Francisco to Grey's Harbor and back to San Francisco.

Q. What sort of a cargo did she carry at that time? A. A cargo of lumber.

Q. With regard to the nature of the cargo, how did it compare with the cargo that she carried before and had on board when she came to grief at San Pedro? A. About the same.

Q. Was there any particular attention paid to having about the same cargo? A. Yes, sir.

Q. How did the amount of flooring that she carried on that second trip compare with what she carried on her trip to San Pedro? A. About the same amount.

Q. How was your deck load, greater or less? A. Greater.

Q. When you came to San Francisco from Grey's Harbor on that second trip, what sort of weather did you have as compared with your trip from Grey's Harbor down to San Pedro? A. About the same kind of weather.

Q. When you got to San Francisco on that second trip, did you have any measurements made of the draught of the vessel, and under what circumstances, if so? A. Yes, sir; Captain Freeman and Captain Bruce came aboard and took the draught of the vessel as we landed at the dock.\* We had then aboard about 25 or

62 30,000 feet of lumber more than we had the trip to San Pedro. The vessel drew then 15 ft. 1 in. After the 25,000

and 30,000 feet of lumber was taken off the deck load, the vessel drew hardly 14 feet 6 inches.

Q. For whom was Captain Freeman appearing there? A. For the tug boat Warrior

Q. And Captain Bruce, who was he appearing for? A. For the owners of the schooner Sailor Boy.

Q. Captain Freeman is dead now, is he? A. Yes, sir.

Q. Well, after taking off sufficient of the deck load to make the cargo equal to that which was on board at San Pedro, did Captain Freeman and Captain Bruce measure the draught of the vessel? A. Yes, sir.

Q. Were you present and saw it done? A. Yes, sir.

Q. The draught by their measurement was how much then? A. A little less than 14 ft 6 in.

Q. Where you loaded at Grey's Harbor, what was the character at that season of the year, of the water, fresh or salt? A. Fresh.

Q. Any difference in draught, between the vessel as she lay at the wharf at Grey's Harbor and the outer harbor at San Pedro? A. Yes, sir.

63 Q. What difference? \* About three inches.

Q. Three inches less in salt water? A. Yes, sir.

Q. Do you know what difference there is between the time when the tide makes and turns on the outer bar of San Pedro, and the time when it makes and turns up at the Southern Pacific Railroad wharf? A. The distance between the outside bar and the railroad depot at San Pedro is so short that I shouldn't think there would be any hardly.

Q. Do you know anything about it from observation whether in fact there is or not? A. I do not, but then the gauge at the wharf corresponds with the depth of water at the outside bar, that is what the gauge is placed there for.

Q. Do you expect to go to sea soon, Captain? A. In about twenty days.

Q. On what voyage? A. On a voyage to Chili.

*Cross Examination.*

By MR. PAGE—Q. At what date did you leave Grey's Harbor on the voyage to San Francisco after the repair of your vessel? A. It is so long ago now that I have forgotten the date.

Q. Well, taking the time lost at San Pedro and the repair of the ship, and the voyage up to San Francisco, and the delay here, and the voyage up to Grey's Harbor, and the loading \* there, 64 about how many months would you judge that you lost. A.

About three weeks—a little more than three weeks. I could give you the dates exactly if I could refer to my books.

Q. That is from the 5th day of January, until the day you were ready to sail from Grey's Harbor again for San Francisco was about three weeks or a little more. A. From the time I arrived at San Pedro to the time I sailed to Grey's Harbor was from 37 to 40 days, I can't tell exactly.

Q. How long were you coming down to San Francisco on the second voyage? A. I don't remember.

Q. You remember whether you had any rough weather or fair weather? A. Yes, I remember we had heavy winds.

Q. From what quarter? A. From the northwest; we shipped a good deal of water. Hove to on the double reefed mainsail, and jib.

Q. How was business up there at Grey's Harbor with reference to loading ships on this second occasion, were they as busy turning out their shipping lumber as they had been previously? A. Just the same.

*Re-direct Examination.*

By MR. MCGRAW—Q The logs which supply that mill at Grey's Harbor are hauled up from a boom, are they not? A.

Yes, sir.\*

65 Q. They are in the water before they are sawed at the mill? A. Yes, sir.

H. JOHNSON.

[Endorsed:] Published and filed August 24th, 1891.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.\**

66 In the United States District Court, Northern District of California.

THE S. H. HARMON LUMBER COMPANY, Libellant, }

vs.

STEAM TUG "WARRIOR." }

It is hereby stipulated and agreed that the testimony of H. Madsen, witness sworn and examined on behalf of the libellants, may be taken by Samuel Rosenheim, a Notary Public in and for the City and County of San Francisco, State of California, at his office, No. 303 California street, room 7, in said City, County and State, on the 6th day of February, A. D. 1889, between the hours of 2 o'clock P. M. and 5 P. M. of said day, commencing at 2 P. M., being taken in shorthand, and that the shorthand reporter's notes may be transcribed and when so transcribed the same may be read in evidence on the trial of this cause as the depositions of the witnesses, subject to all legal objections to the questions or answers, except as to the form thereof.

It is also stipulated and agreed that the reading of said depositions of the said witnesses, their signatures to the same, and all notice of the taking of said depositions and other formal requirements be and the same hereby are waved.

Dated the 6th day of February, A. D. 1889.

ROTHCHILD & ACH,

*For Libellants.*

PAGE & EELLS,

*Proctors for Claimant.\**

67 Deposition of HANS MADSEN, taken on behalf of Libellant.

Taken and sworn to before SAMUEL ROSENHEIM, a Notary Public in and for the City and County of San Francisco, State of California, at 303 California street, San Francisco, on February 6th, 1889.

## COUNSEL APPEARING:

For Libellant, HENRY ACH, Esq. (Rothchild & Ach)

For Claimant, CHARLES PAGE, Esq. (Page & Eells)

HANS MADSEN, a witness called on behalf of the libellant, being duly sworn, deposes and testifies as follows:

*Direct Examination.*

By MR. ACH—Q. What is your name, age, place of residence, and occupation. A. My name is Hans Madsen, age thirty five, occupation, ship master, residence 131 Eddy street, Oakland.\*

68 Q. How long have you been engaged in the business of ships master? A. For the last ten years.

Q. Are you at present in command of any sailing vessel? A. No, sir; not now at the present time.

Q. How long ago did you cease having command of any vessel? A. About fourteen days ago.

Q. What vessel were you in command of then? A. The schooner "Reporter."

Q. How long had you been in command of the schooner "Reporter." A. From the 11th of June, 1887, up to fourteen days ago.

Q. What vessels were you master of before that time? A. The "Helen M. Kimball."

Q. How long were you in her? A. Fifteen months.

Q. And before that? A. The schooner "Anna Madsen."

Q. All sea-going craft? A. Yes, sir.

Q. Were you engaged in that business on this coast? A. On this coast all the time for the past ten years.

Q. Were you master of the schooner "Reporter" on the 5th of January, 1888? A. Yes, sir.

Q. Do you know Captain Johnson of the schooner "Sailor Boy"? A. Yes, sir.

Q. Did you know him in January, 1888? A. Yes, sir.

69 Q. Where were you on the 5th of January, 1888? \* A. Down at San Pedro, towed in to San Pedro.

Q. By what were you towed in? A. By the steam tug "Warrior."

Q. What were you laden with at that time? A. Lumber.

Q. Were you towed in from what is known as the outside, over the two bars there in to Wilmington Harbor? A. Yes, sir; I was towed in from anchorage by the tug "Warrior."

Q. Do you know who was in command of the tug "Warrior"? A. Yes, sir.

Q. What was his name? A. I only know him by the name of Pete.

Q. Had you been into Wilmington before that time with the schooner "Reporter." A. I had been there before, yes, sir.

Q. How much water was the schooner "Reporter" drawing when she was towed in over the bar on the 5th day of January, 1888? A. Thirteen feet, nine inches.

Q. How do you know, did you measure it? A. By the measurement; I measured it.

Q. Were you towed in after or before the schooner "Sailor Boy" on that day? A. I was towed in before.

Q. Was the schooner "Sailor Boy" laying further out from the bar than you were? A. Just about the same.\*

70 Q. Did anything happen to the schooner "Reporter" when she was towed in? A. She touched bottom lightly on the outer bar.

Q. Do you know whether or not the tide was ebbing or flowing at the time you were towed in? A. I know when I came in by the railroad wharf I noticed that there was a running ebb tide, when I looked at the beacon.

Q. How far from the railroad wharf were you when the tug let go of you? A. I suppose about five or six hundred yards, something like that; I don't know exactly the distance.

Q. How long did it take you to get to the wharf from the time that the "Warrior" let go of you? A. I suppose it took me about from five to six minutes or so, I didn't exactly time it.

Q. Did it take you a less time to get to that wharf after the "Warrior" let go of you than it could possibly have taken the "Warrior" to get back to the schooner "Sailor Boy" at the time when you noticed that the tide was ebbing; in other words, did a less time elapse when you looked at the beacon and saw that the tide was ebbing than it would have required the "Warrior" to get back to the schooner "Sailor Boy" after she let go of you? A. Yes, sir; it took her twice as long and more to get back to the "Sailor Boy."

71 Q. Was there anybody else there when you noticed that the<sup>e</sup> tide was ebbing? A. There was somebody on the steamer there; I heard the pilot, he was talking about it for one, and Captain Hanna was talking about it too; he was on the "Eureka" at the time.

Q. Do you know where Captain Hanna is now?

MR. PAGE. I object to what anybody said about it.

A. He is on the steamer "Pomona."

MR. ACH—Q. Do you know where she is? A. I don't know where she is; she is running to Eureka.

Q. Do you expect to be going to sea pretty soon? A. Well, I don't know; whenever I get a show I expect to, may be a week, may be a month.

Q. You don't expect to be here any longer than a month? A. No, I cannot tell; whenever I get a ship I will go to sea.

#### *Cross Examination.*

BY MR. PAGE—Q. About how far from the outer bar was the "Reporter" at the time that the "Warrior" took hold of her? A. I don't know; I reckon that as about a mile; of course I don't know exactly the distance, or a mile and a half, I don't know exactly.

Q. At what time did the "Warrior" take hold of the "Reporter" to take her over the bar? A. I think it was about half past

one when she took hold by our time, and about two o'clock when she crossed the bar.

Q. Was your time different from the Wilmington time? A. Sometimes there was from five to ten minutes difference \*  
72 coming in from sea.

Q. Was that owing to your clock being out of order or was it a difference of local time? A. It is a difference of time, we gain time on the voyage.

Q. By your time you say it was half past one? A. Yes, sir.

Q. What time would it be by the local time under those circumstances, earlier or later? A. I think it was probably a little later; there was not a great deal of difference, I know.

Q. Are you simply now estimating the time or have you any recollection of looking at the clock at that time to see when you took hold? A. No, sir; I have no recollection of looking at the clock. I put down on my log that it was two o'clock when I crossed the bar.

Q. Do you remember looking at your watch to see it was two o'clock? A. Well, no; but of course I had a watch on me and I naturally looked at the time.

Q. Would it take a half an hour to get from your anchorage to the bar? A. It would take a half hour to get our anchor up and get our hawser out and get under way.

Q. Was your anchor down when the "Warrior" took hold of you? A. Yes, sir; my anchor was down, I came out on the "Warrior" myself from the wharf.\*

73 Q. What time did the "Warrior" leave the wharf when you went out with her? A. The "Warrior" left the wharf somewhere about one o'clock.

Q. How long would it take the "Warrior" to go from the wharf down to where you lay? A. It would take her about half an hour to get down to her.

Q. Was it two o'clock when you first reached the bar or when you got over the bar? A. It was two o'clock when I got over the bar.

Q. These bars are only a few feet wide? A. That is only just as wide as from here across the street.

Q. Is the outer bar a hundred feet wide in the channel? A. In the channel, yes, sir; I suppose it is; of course I don't know exactly.

Q. Is the inner bar wider or narrower? A. I guess it is about the same.

Q. There is only a small space between them? A. There is only a small space between them.

Q. How many minutes would it take to cross both bars ordinarily if nothing happens? A. It might take five minutes or it might take ten minutes; if it was running ebb it might take a little longer, if it was flood tide it would take so much quicker.

Q. After you got up to the point where the "Warrior" dropped you, which you say was perhaps about five hundred yards from the railroad wharf, did you drift right up to the wharf? A. I drifted

right up to the wharf. Generally when they let \* us go we drift right up alongside the wharf; when we want to go in we drop anchor right abreast of our berth.

74 Q. How far up did you drift beyond the railroad wharf? A. From the railroad wharf and up to the San Pedro lumber wharf.

Q. You did not drop your anchor till you got to the San Pedro Lumber Company's wharf? A. No, sir.

Q. How long did that take you? A. Well, I don't know; I suppose that took me all of twenty minutes to get up to that wharf.

Q. And about how far would that be from the place where the "Warrior" cast you off? A. Well, I could not exactly tell you, it is quite a little distance.

Q. Is it a mile? A. No, sir; it is not a mile, it is not a half a mile, I don't think.

Q. You did not sail up there, of course you could not sail up? A. She went up, there was a fair wind blowing, of course I didn't have any sails on, she drifted, went up with the wind itself.

Q. How large a schooner is yours? A. Three hundred and thirty-three tons.

Q. Is she about the same size as the "Sailor Boy"? A. Yes, sir; she is about the same size, perhaps a little \* larger.

75 Q. How much lumber did you have on board? A. At that time I had four hundred and thirty-five thousand feet of pine.

Q. Are you pretty well acquainted with the channel in that bar? A. Yes, sir; I have been running there for the last eight years and usually sailed in myself.

Q. Did the "Warrior" take you over the usual channel? A. She took me over the usual channel.

Q. Do you know at what time high water was there at the bar on that day? A. It should be high water on that day at two o'clock, I believe.

Q. Supposing it was high water at twenty-one minutes past two on that day, can you account for your vessel having touched bottom, drawing thirteen foot nine? A. There was considerable swell on the bar.

Q. Do you know what the depth of water was on the outer bay? A. Well, sometimes they have as much as sixteen feet spring tides.

Q. Do you know what the tides were on this day when you went over it, whether they were big tides or small tides. A. On that day I think the tides were just about even; it was just about an ebb tide.

Q. About how much water would that make? A. That would be about fourteen feet.

Q. Was that when you crossed the bar in your opinion that \* there was only about fourteen feet on the bar? A. I guess that was all there was that day, probably fourteen and a half, I don't know exactly; I did not see the tide guage.

76 Q. How long have you known Captain Melburg, the Captain of the "Warrior," who took you over? A. I have known him for a long time.

Q. Did you ever know him to be so careless that he would take a vessel drawing fourteen feet six on a captain's statment over a bar that there was only fourteen feet of water on? A. No, sir; I have never known him to be that kind of a man at all; he is an honest kind of a man; he has always tried to accommodate all the captains down there, he would and do all he could for them, but as I say, there was a big swell on that day and probably he was not aware of that.

Q. He had just crossed the bar going out, had he not? A. Yes, sir.

Q. And he crossed the bar coming in with you? A. Yes, sir; but sometimes on the bar it will be nice and smooth and then all at once it will come in rough; that is the way with all bars.

Q. Did he take soundings of the bar as he went out? A. He always used to sound.

Q. Did he on that occasion when you went out with him? A. He did that day sound going out.

Q. Did you hear the returns of the soundings? A. No, sir; I did not hear.\*

77 Q. You did not take any notice? A. No, sir.

Q. Are you willing to swear positively that you were drawing thirteen feet nine inches, and that you struck on the channel going over it? A. Yes, sir.

Q. You think there can be no mistake about that? A. No, sir.

Q. Was your schooner damaged at all? A. She was not damaged, no, sir; she touched lightly; of course it is a thing we don't notice much; we always strike there more or less.

Q. Did you touch on the outer bar or the inner bar? A. On the outer bar.

Q. The inner bar is considerably more shallow than the outer bar, is it not? A. The inner bar is supposed to be shallower.

Q. How do you account for it that you should strike on the outer bar where there is the most water, and not touch on the inner bar where it is considerably shallower? A. Well, on account of the big swell that was running on the outer bar that day; when we got on the inner bar it was considerably smoother, and the vessel did not rise any.

Q. There is a distance between the two bars of fifteen or twenty feet, is there not? A. There is more than that; it is all of two hundred feet.

Q. As much as that in a direct line between the two bars? A. Yes, sir.

78 Q. Did you notice the water yourself when you passed the railroad wharf, to see whether the tide was then running out or not? A. I noticed that the tide was running out.

Q. Was it running out strong? A. No, sir; it was not running out strong, it was just ebbing.

Q. But enough to turn the beacon? A. You could just see the wake behind the beacon.

Q. How long do you suppose it had been ebbing then, if you could see the wake, it must have been some considerable time then? A. No, sir; I don't think it had ebbed very long.

Q. Between the end of the incoming tide and the beginning of the outgoing tide there is what is called slack water, is there not?

A. Yes, sir.

Q. Then it does not operate either way? A. No, sir; it is at a standstill.

Q. Then it begins to flow and at first it does not flow very fast, does it? A. No, sir; when it starts on the ebb it is running slowly.

Q. And after awhile it gains force? A. Yes, sir; it runs three or four hours and it gains force all the time.

Q. Judging from your ability to see that the tide was ebbing from the wake behind the beacon, must it not have been running some time ebb?\* A. No, sir; it had not been running very

79 long.

Q. What caused your attention to be called to the beacon? A. I don't know; we happened to go right by and I saw it was running ebb tide and I said to the mate, "If she is going outside to get the "Sailor Boy" she will get stuck," as I knew she was drawing more than I was.

Q. You did not notice any buoys on the way up? A. I did not take any notice of the buoys.

Q. Your idea was that it was pretty rough on the bar? A. It was pretty rough on the bar that day.

Q. Would you call it very rough or slightly rough? A. It was not very rough, it was slightly rough.

Q. What way was the wind? A. The wind was southwest during the night, and at the time I was towed in I guess the wind was about west southwest.

Q. How long would it take the "Warrior" from the place where she dropped you to get back over the bar? A. It would take her, I guess, about ten minutes.

Q. Do you know how far it is? A. No, sir; I could not tell you.

*Re-direct Examination.*

BY MR. ACH—Q. In answer to Mr. Page's question you say that your attention was called to the fact that the tide was ebbing, and you say you thought of that in connection with the fact that he would have some trouble in getting the "Sailor Boy" over, which you knew was drawing more water than you were? A. Yes,

80 sir.\*

Q. And you imagined he would have more trouble getting her over than getting you over? A. Yes, sir.

Q. How long would it have taken the "Warrior" to go from the outside bar to where the "Sailor Boy" lay, after she got on the outside bar she had to go a mile or so then, didn't she? A. Yes, sir; she was lying outside probably about a mile, the same as I was; probably a little more or a little less.

Q. How long would it take her to go out there? A. I suppose about a quarter of an hour.

Q. It would take her some time to take hold and get under headway? A. Yes, sir.

Q. Would it have taken her longer to get the "Sailor Boy" into the outside edge of the outer buoy than it would take her to get out without the "Sailor Boy?" A. It would take her a little longer to get back, yes, sir.

Q. I understand that the railroad wharf is something different from the Lumber Company's wharf? A. Yes, sir; it is a different wharf.

Q. And you passed close up by the railroad company's wharf? A. Right alongside the railroad company's wharf.

Q. And in going right alongside, you saw this tide gauge and saw the tide was ebbing? A. I did not see the tide gauge; I saw it on the beacon there.

Q. At the time that you saw that the tide was ebbing you made some remark to the mate about it, did you? A. Yes, sir.\*

81

*Re cross Examination.*

BY MR. PAGE Q. Is there what is called "The River" there? A. There is a little bit of a river, yes, sir.

Q. Is it fresh or salt water? A. Salt water.

Q. That is to say, San Pedro Bay runs up in a narrow channel into the land, and they call it "The River," is that so? A. It is usually called a creek, a little bit of a stream there.

Q. Is that where the San Pedro Lumber Company's wharf is up that creek? A. Yes, sir; there right at that creek in the bay there.

Q. How far away is that from the railroad wharf; it took you about twenty minutes to get there, I think you said? A. Yes, sir; I don't know how far it would be.

Q. That would be what would be called up the bay? A. That is up the bay.

Q. That is, the San Pedro wharf would be about twenty minutes travel as it was to you on that occasion up the bay? A. Yes, sir.

Q. And you drifted that distance up there? A. Yes, sir.

*Re-direct Examination.*

BY MR. ACH—Q. You had considerable headway I suppose, when the "Warrior" let go of you, did you? A. Yes, sir; and there was a strong wind that day and fairly\* drove me up.

82 Q. You were pretty close to the railroad wharf when she let go of you? A. Yes, sir; pretty close to the railroad wharf.

[ENDORSED :] Published and filed August 24th, 1891. Southard Hoffman, Clerk. By J. S. Manley, Deputy Clerk.\*

83 In the United States District Court, Northern District of California.

S H. HARMON, et al., libellants, }  
 versus }  
 STEAM TUG WARRIOR. }

It is hereby stipulated and agreed that the testimony of Henry Johnson and S. C. Mitchell, witnesses sworn and examined on behalf of the libellants, may be taken by Samuel Rosenheim, a Notary Public in and for the City and County of San Francisco, State

of California, at his office, No. 303 California street, room 7, being taken in short-hand, and that the short-hand reporter's notes may be transcribed, and when so transcribed the same may be read in evidence on the trial of this cause as the depositions of the witnesses, subject to all legal objections to questions or answers, except as to the form thereof.

It is also stipulated and agreed that the reading of said depositions to the witnesses, his signature to the same, and all notice of the taking of said depositions and other formal requirements, be waived.

PAGE & EELLS,  
Proctors for Claimants.  
ROTHCHILD & ACH,  
Proctors for Libellants.\*

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84 Deposition of HENRY JOHNSON, taken on behalf of libellants.

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Taken and sworn to before Samuel Rosenheim, a Notary Public in and for the City and County of San Francisco, State of California, at 303 California Street, San Francisco, on December 3rd, 1888.

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Present—Mr. ACH, of counsel for libellants, Mr. PAGE, of counsel for claimant.

Examination-in-chief of Henry Johnson, on behalf of libellants.

By MR. ACH—Q. 1. What is your name, your age, your place of residence, and your occupation? A. My name is Henry Johnson, my occupation is ship's master, my age is thirty-five years, my place of residence San Francisco.

Q. 2. Are you the present master of the schooner "Sailor Boy?"

A. Yes, sir.\*

85 Q. 3. How long have you been master of the schooner "Sailor Boy?" A. One year.

Q. 4. How long have you been engaged in that business? A. Twenty years.

Q. 5. Where? A. On, principally on this coast. I have been here since 1870.

Q. 6. Were you master of the "Sailor Boy" on the fifth day of January, 1888? A. Yes, sir.

Q. 7. Were you such master, and on board of the schooner "Sailor Boy," at the time of the accident which occurred on that date at Wilmington or San Pedro Harbor? A. Yes, sir.

Q. 8. Will you state what, if anything, occurred between yourself and the captain or master of the steam tug "Warrior" on the fifth day of January, 1888, prior to your being towed in by that vessel. State all about it, and give all conversations. A. Shall I state about the time when I came to anchor there?

Q. 9. State all about it, to save time. A. I came to an anchor in San Pedro Bay at nine o'clock in the morning of the fifth of January. I waited until one o'clock in the afternoon, and then I took my boat and started to pull in to the creek, and report myself. On

86 my way pulling in I met the tug "Warrior" coming out to tow the schooner "Reporter" in. I pulled up alongside of the tug, and asked\* the captain if there was any show to get towed in on that tide. His answer was that he thought I could. He asked me the draft of water that I drew, and I told him fourteen feet and a half. He asked me if I had a good tow line, and I told him I had a brand new six inch hawser, just got it for the same purpose. He then told me that he didn't think that my line was good enough, as there was considerable swell on the bar, and he told me that I had better take his hawser, and I told him I wouldn't take any chances whatsoever, and asked him the price or extra charges for his line, and he told me ten dollars, and I said, "All right, I will take it." He told me then to go aboard and heave up my anchor and be ready, as there was not much left of the tide. I went aboard and raised my anchor, and he came off, and I took his hawser, and we proceeded in to the bar.

Q. 10. How long a time were you engaged in conversation with him before you arrived at a conclusion, and left his tug to comply with his request in getting ready? A. Oh, not over six or seven minutes.

Q. 11. How far from the "Sailor Boy" were you at the time of this conversation? A. About three quarters of a mile.

Q. 12. What time was it that you left the "Sailor Boy" to pull in? A. At one o'clock.

Q. 13. (By MR. PAGE) That is, in the boat? A. Yes, sir.

87 Q. 14. (By MR. ACH)—How long did it take you to pull three quarters of a mile there and back; in other words, how\* long were you gone from your schooner until you got back? A. I should think half an hour.

Q. 15. What was the "Sailor Boy" laden with then, if at all? A. Lumber.

Q. 16. Where did she come from? A. Gray's Harbor, Washington Territory.

Q. 17. What kind of lumber? A. Well, the principal part of the cargo was rough lumber.

Q. 18. Well, what was its character? It was not oak, was it? A. Well, the most of it was scantlings. There was one hundred thousand feet of dressed lumber, flooring, tongue and grooved.

Q. 19. How many feet did she carry altogether on that trip? A. Three hundred and sixty-five thousand feet.

Q. 20. Now, how long after you returned to your schooner was it before the "Warrior" came out again to take you? A. Well, it must have been about three quarters of an hour, I should think, perhaps a little more.

Q. 21. How much time was consumed by the tug "Warrior" in taking hold of you and getting under headway after she came up? A. Oh, a quarter of an hour.

Q. 22. How far were you from what is known as the outer bar—you know the outer bar? A. Yes, sir.

Q. 23. How far were you anchored—or I should say drifted, having pulled up your anchor, at that time from the outer bar?

A. Oh, a mile and a half perhaps, or a mile and a quarter.

88 Q. 24. How long did it take the tug to tow you up to the\*  
outer bar? A. After we got headway on?

Q. 25. Well, after she started to pull? A. Oh, not more than  
a quarter of an hour.

Q. 26. What was the condition of the tide when you arrived at  
the outer bar? A. The tide was ebb.

Q. 27. Well now, go on and state what happened? A. Well,  
as soon as we got in on the bar she struck.

Q. 28. The outer bar? A. Yes, the outer bar. She struck  
about her amidships, then the tow line parted, and it took us some  
time—took us about twenty minutes, I guess, before we got the line  
back again.

Q. 29. Where did the tow part; was it while you were on the  
bar? A. On the bar; yes, sir.

Q. 30. Well, what happened to your schooner? A. Well, she  
struck very heavy and lost her shoe, her false keel took a sliver out  
of her main keel, and stranded the vessel.

Q. 31. Did she drift any? A. Of course she drifted; after the  
line parted she drifted out of the channel in towards the island.

Q. 32. Deadman's Island? A. Yes, sir.

Q. 33. Strike on any rocks there? A. She struck on the rocks  
there; yes, sir.\*

89 Q. 34. Was your vessel drawing less water fore than she  
was aft? A. Yes, sir; about eight inches less.

Q. 35. What was the draft of your vessel at that time, the after  
draft of the water? A. Fourteen feet and a half.

Q. 36. Where had the vessel been on the trip prior to that trip?  
A. Here to San Francisco.

Q. 37. From where? A. From Gray's Harbor.

Q. 38. What was she laden with at that time? A. Lumber.

Q. 39. What was the color of your vessel at that time? A.  
White painted.

Q. 40. What was the amount of cargo that she carried at that  
time? A. That I couldn't say.

Q. 41. Well, was it more or less? A. It was more.

Q. 42. How much more? A. Well, it must have been perhaps  
twenty five or thirty thousand feet more.

Q. 43. Had she been painted after that trip? A. No, sir.

Q. 44. Were there any water lines or marks left upon her by  
reason of her trip to San Francisco? A. Yes, sir; there was a  
coal tar streak, you know, that you get down there at the bulk-  
heads.\*

90 Q. 45. She drew more water, did she, on that trip, than  
she did on the trip to San Pedro or Bay. A. Yes, sir.

Q. 46. And by reason of that draft to this San Francisco Bay  
there was a streak left on her white painted sides? A. Yes, sir;  
two or three streaks like that.

Q. 47. Which had not been removed by you or anybody on the  
ship after that trip? A. No, sir.

Q. 48. Do you know how much water she was drawing on that  
trip? A. I do not. I could tell pretty near—about fifteen feet—

fourteen feet and nine or ten inches. She drew fourteen feet and nine inches this time when I came in.

Q. 49. Where is the "Sailor Boy" now? A. Laying at Folsom No. 1.

Q. 50. In San Francisco? A. Yes, sir.

Q. 51. Did she come to this port laden? A. Yes, sir.

Q. 52. With what? A. With lumber.

Q. 53. How much lumber? A. About three hundred and ninety thousand feet.

Q. 54. That is more than she had when she went to San Pedro, isn't it? A. No, sir; she has got three hundred and ninety thousand feet on now.

Q. 55. Well, that is more than she had on when she went to San Pedro? A. Yes, sir.

Q. 56. How much water did she draw this trip, when she had\* this three hundred and ninety thousand feet on? A. Fourteen feet and nine inches.

Q. 57. That is, aft? A. Yes, sir.

Q. 58. Did you have any conversation with the captain of the tug "Warrior," Captain John Peter Melberg, at Wilmington, after you were towed in, during which the captain told you that your schooner was drawing fifteen feet and one inch that trip? A. Yes, sir.

Q. 59. What did you tell him, if anything? A. I told him that she only drew fourteen feet and a half, to the best of my knowledge.

Q. 60. Did you, after he made that remark, stand considering for five minutes, and then tell him that you would perhaps speak to him about it? A. No, sir.

Q. 61. What did you do after your vessel drifted near those rocks and struck on those rocks? What was done then; did he come up and take hold of you? A. Yes, sir; he was trying to throw heavy lines, and the tug went to get the hawser back again.

Q. 62. Well, go on and state all that occurred there. A. He got the hawser back again, and got the tug "Falcon" to assist us to tow—towed along the same line ahead of the "Warrior," and after the shoe and false keel broke off of her she drifted in and struck on the inner bar, and commenced to fill with water. I then went ashore and hired men to help\* to pump, and I kept the pump going all that night, and all the next day, in order to keep her free. At three o'clock that morning the "Warrior" came alongside and towed us up to the wharf at San Pedro.

Q. 63. What did you do when you got to the wharf? A. We commenced unloading at ten o'clock that forenoon.

Q. 64. How much did you unload that forenoon; can you tell, about? A. Well about thirty thousand feet.

Q. 65. Did you enter a protest? A. Yes, sir.

Q. 66. Is this a copy of it? A. Yes, sir.

Q. 67. Did you pay out any moneys to any employes other than the ship's hands for pumping out the ship? A. Yes, sir.

Q. 68. How many men did you employ, and how much did you pay out? A. I don't remember all that.

Q. 69. Do you remember how many men you employed? A. Well, we generally had four on.

Q. 70. How many extra men? A. Four extra men we had the first night and the first day.

Q. 71. What did you pay the tug "Warrior" for towing you in, or what were you to pay her; do you remember that? No, sir; I don't remember that.

Q. 72. Did you have any conversation with Captain Melberg relative to the marking or rather the marks upon your schooner?

A. Yes, sir.\*

93 Q. 73. What was it? A. He asked me where I had the mark, and I told him that the vessel was marked up to thirteen feet. So I told him I figured from the end of the rudder, and told him that I thought that the end of the rudder was from three or four inches out of the water up at the mill in Gray's Harbor, but that I didn't measure it with a rule. That is what I told him.

Q. 74. Did you tell him it was only one inch? A. No, sir.

Q. 75. You make use of the expression, as I understand you, "three or four inches?" A. Something like that.

*Cross-examination of Henry Johnson.*

Q. 1. (By Mr. PAGE)—At the time you went down to Wilmington on the occasion of this loss how long had you been in command of the "Sailor Boy?" A. Oh, a little over a month.

Q. 2. What voyages have you made in that ship? A. That was my first voyage

Q. 3. In the "Sailor Boy?" A. Yes, sir.

Q. 4. From Gray's Harbor? A. From San Francisco to Gray's Harbor.

Q. 5. And from Gray's Harbor to San Pedro? A. Yes, sir.

Q. 6. What did you take up from San Francisco to Gray's Harbor? A. Oh, I took up a little general merchandise, thirty  
94 or forty\* tons. I don't remember exactly which.

Q. 7. How long had you been in charge of the "Sailor Boy" before she left San Francisco? A. Just a couple of days.

Q. 8. During that time were you on board all the time, or were you on shore? A. I was on shore.

Q. 9. Did you make any personal examination of the condition of the vessel before you went on board, before starting from San Francisco? A. No, sir.

Q. 10. Where was the "Sailor Boy" laying at that time in San Francisco, alongside the wharf? A. Alongside the wharf.

Q. 11. Close up alongside the wharf? A. Yes, sir; at the bulk-head between Folsom and Harrison streets.

Q. 12. Do you remember whether any vessels were lying up against her on the outside? A. No, sir; I do not. There might have been a little bay vessel.

Q. 13. When you stepped aboard you simply stepped aboard and went off to Gray's Harbor, and that is about the first you knew of the vessel? A. Yes, sir.

95 Q. 14. At Gray's Harbor did she get up alongside the wharf or lay out in the roadstead? A. She went alongside the wharf\*.

- Q. 15. And you took your cargo on board and went to San Pedro?  
 A. Yes, sir.
- Q. 16. How long were you lying at Gray's Harbor? A. About nine or ten days.
- Q. 17. What sort of weather did you have? A. It was wet weather; rained occasionally once in a while; not a great deal, though.
- Q. 18. On the voyage down to San Pedro, how long were you out? A. Thirteen days.
- Q. 19. What sort of weather did you have going down, the usual winter weather? A. Yes, sir; the usual winter weather.
- Q. 20. Rough and wet? A. Yes, sir.
- Q. 21. Rain storms? A. Yes, sir.
- Q. 22. Take much water aboard? A. We took in some occasionally.
- Q. 23. How much of free-board did the "Sailor Boy" have in, or were her decks under water? A. She had a foot side, about a foot.
- Q. 24. That is, her main decks were not under water? A. Oh no, never is.
- Q. 25. How much of your lumber did you have on deck? A. Oh, I had about one hundred and sixty thousand feet on deck.
- Q. 26. Take any water below at all on the voyage down?  
 96 A. No, sir.\*
- Q. 27. As far as you know was the vessel making any water. A. Oh, she leaked a little; yes, sir.
- Q. 28. Did you have any hard weather? A. Oh, we had hard weather like you have, in the winter, you know, no very severe storms
- Q. 29. Now, after you got to the San Pedro roadstead, where was the "Warrior" when you first caught sight of her; had she been to the "Reporter," or was she on the way to the schooner "Reporter?"  
 A. She was on the way, and when I spoke to the captain of the "Warrior" he was passing his hawser aboard the "Reporter."
- Q. 30. He was alongside the "Reporter," then, virtually. A. Yes, sir.
- Q. 31. Now, at what time did you leave your vessel when you went out to report up the creek? A. One o'clock.
- Q. 32. Precisely one o'clock, or are you merely estimating the time? A. Well, about one o'clock.
- Q. 33. Can you now recall anything that would convince you that you had fixed the time at one o'clock? A. Well, yes. I said to my mate that I would wait until one o'clock and see whether the tug was coming out or not, but I didn't see him at one, so I went into the boat to go ashore.
- 97 Q. 34. How far were you away from the "Reporter?"  
 A. Oh, I was about a mile, or something like that.
- Q. 35. Couldn't you see the tug at the "Reporter's" side, then?  
 A. Yes, sir; but she was just coming out of the creek when I started and I didn't pay no attention, didn't notice her until I got in towards the harbor, in towards the bar.

Q. 36. I understand you that you rowed over to where the "Reporter" was? A. Yes, sir.

Q. 37. And that you then made your bargain? A. Yes, sir.

Q. 38. And then returned to your vessel? A. Yes, sir.

Q. 39. How much time did you consume in going back to the vessel—in your absence from your vessel? A. I think it was half an hour, as near as I can recollect.

Q. 40. Well, are you willing to swear that it was as much as half an hour that you were gone? A. Yes, sir; that is as near I can come to it, I think.

Q. 41. About how long did it take you to row from your vessel to where the steamer was? A. Well, it took me about a quarter of an hour—ten minutes to where the steamer was.

Q. 42. The "Warrior" took the "Reporter" in first, didn't she? A. Yes, sir.

Q. 43. About how long was it before the "Warrior" came back after you left her? A. That was about half an hour. You see it took the "Reporter" sometime to heave in her anchor I noticed, because\* sometimes there was a good deal of chain on.

Q. 44. How far were you from the outer bar? A. Oh, about a mile and a half or a mile and a quarter; something like that.

Q. 45. And you think it was about an hour from the time you left the "Warrior" to the time that she got back again? A. Yes, I think so.

Q. 46. Do you know what time high water was on that day at Wilmington, I mean at the bar? A. No, sir; I do not. I know that it was about somewhere around two o'clock. I will tell you the reason why I haven't got it to the minute. I used Thomas Tennents' almanac, and that very day there is a change in the tide, you know. It says "large" and "small" on that very day, and so I couldn't come exactly to a minute. You understand, the figures say in there the day before and the day after, and taking an average, you know, it must have been about two o'clock.

Q. 47. Are you confident that it was an hour from the time you left the "Warrior" to the time she got back to you? A. I should think so.

Q. 48. Is that merely an estimate or did you then take the time? A. No, sir; I didn't take any time or mark it down.

Q. 49. You merely think it was probably about an hour. A. Yes, sir; I think so. It took me a quarter of an hour to pull back to the vessel again from the "Warrior," and I\* think she was gone about three-quarters of an hour, going in and coming back to me. That is, after I got aboard of my own vessel you know.

Q. 50. When you told the captain of the "Warrior" your draft was fourteen and a half feet, you were telling him, of course, what somebody else had told you was your draft under those circumstances. A. Yes, sir; and what I have seen of the vessel since, you know. I know she couldn't draw any more. I have carried eight cargoes in her now, all together.

- Q. 51. After you got on board did you heave up your anchor?  
 A. Yes, sir.
- Q. 52. Or did you simply heave short. A. We hove short, yes.
- Q. 53. You had your anchor up, though, before he took hold of you, hadn't you? A. Well, it was kind of dragging, you know. Of course we didn't have it up before we had this hawser. We were heaving it up on the way to the bar.
- Q. 54. So that you were virtually drifting, slowly drifting at the time he took hold of you? A. Yes, sir; the anchor was drifting a few feet—dragging the anchor along,
- Q. 55. And you put in the time between the place that he took hold of you and the outer bar in making the anchor secure on the cathead? A. Yes, sir.
- Q. 56. How long did it take you to get to the outer bar, do you remember, from the time he took hold? A. Oh, about a 100 quarter of an hour.
- Q. 57. That is conjecture, a guess? A. Yes, sir; a guess.
- Q. 58. What was the condition of the tide when you arrived at the outer bar. A. Well, the tide was ebb.
- Q. 59. How did you tell it was ebb? A. Well, you can tell it on the buoys that are anchored there.
- Q. 60. Did you take notice that the buoys indicated that the tide was ebb? A. I hadn't time to do that at the time.
- Q. 61. That is to say, that you did not in fact take notice? A. Yes, sir.
- Q. 62. And when you say the tide was ebb, you thought it must have been ebb? A. Yes, sir; I think so, because I heard so many other people say so in San Pedro.
- Q. 63. That it was ebb? A. Yes, sir.
- Q. 64. But as a matter of fact you would not swear positively to to any knowledge that the tide was ebb? A. No, sir; I would not.
- Q. 65. Did I understand you say that she struck immediately as she touched the bar, or almost immediately. A. Yes, sir.
- Q. 66. The false keel came up later on? A. Yes, sir.\*
- 101 Q. 67. Or her forefoot rather, her forefoot and part of her keel? A. Yes, her forefoot.
- Q. 68. When you said that the "Sailor Boy" was drawing eight inches less forward than aft, you didn't say that from any knowledge at the time that you started from here? A. Well, she might have drawn less. We don't pay so particular attention to that as we do on their draft aft.
- Q. 69. Well, as a matter of fact you don't know what she actually was drawing, except from what you have since learned; isn't that so? A. Yes, sir.
- Q. 70. That is all you know about it? A. Yes, sir.
- Q. 71. And if there was any difference between her draft forward, and her draft aft, you don't know that in any way except from what you have since heard? A. I know she was drawing more aft by eight inches than she was forward. I am positive of that.
- Q. 72. Are you positive of that from what you knew before the accident occurred, or after? A. Well, I paid attention to that.

Q. 73. When did you pay attention to that? A. At the time we were loading at Gray's Harbor. It wouldn't do to go ahead and load a vessel by the head.

Q. 74. Did you superintend the loading of the vessel yourself? A. Yes, sir.

Q. 75. And you saw at that time that she was a little by the stern? A. Yes, sir. \*

102 Q. 76. From what place did the "Sailor Boy" come to San Francisco on the voyage just before you took charge of her; from Gray's Harbor also? A. Yes, sir.

Q. 77. Do you remember how long she had been in port on that voyage before you took charge, a matter of days or weeks? A. She was about ten days in port.

Q. 78. When did you last arrive in San Francisco, on this voyage? A. I arrived last Sunday a week; yesterday a week.

Q. 79. What sort of a voyage did you have coming down? A. I had a fine voyage.

Q. 80. Fine weather? A. Yes, sir.

Q. 81. What sort of weather did you have up there at Gray's Harbor, fine weather? A. Oh, we had a little rain once in a while. It rained a couple of days after I got out to sea.

Q. 82. But otherwise it was fine weather? A. Yes, sir.

Q. 83. You did not have any such voyage as you did on the way down to San Pedro? A. Oh, no, I did not.

*Re-examination of Henry Johnson.*

Q. 1.—(By Mr. ACH)—What was the character—what  
103 kind of \* lumber was it that you brought down on that trip? Was it oak, or fir, or pine, or cedar, or what? A. It was pine.

Q. 2. Have you carried pine lumber before and since that cargo? A. I have carried pine all the time since that.

Q. 3. What was the fact, if you know, as to where this lumber came from? Had it been laying on the dock for a long time, or was it taken directly from the mill? A. I took some off the dock and a good deal from the mill. The flooring, you know, that lays in the shed.

Q. 4. And that was dry? A. Yes, sir. All the flooring, you know, lays in the shed; none of it lays on the wharf.

Q. 5. What is the fact as to whether or not the cargo that you had at that time was heavier or lighter than the ordinary cargo that you carry the year around? A. Since I took the "Sailor Boy" I have found but very little difference, it is about the same.

Q. 6. And the cargo that you had on deck, that was pine, was it? A. Yes, sir.

Q. 7. Did you have the flooring on deck? A. No, sir.

Q. 8. You didn't have this deck-load covered in, did you. A. No, sir.

Q. 9. Did it rain all the time that you were on the way down?

A. Yes, sir; it rained considerable. \*

104 Q. 10. And it was pine, I understand? A. Yes, sir.

Q. 11. And pine doesn't take in the water like redwood and cedar? A. Not like redwood.

Q. 12. What was the condition of the cargo when you delivered it at San Pedro; had it grown heavier to any considerable degree?

A. I don't think so.

Q. 13.—(By Mr. PAGE)—You don't you, do you. A. Well, I don't think so.

Q. 14.—(By Mr. ACH)—Did you examine it? Don't you handle it? A. Yes, sir.

Q. 15. Did you make any investigation after you arrived at San Pedro concerning the tides? A. At that time?

Q. 16. At that tide? A. Yes, sir.

Q. 17. What did you discover as to whether the water was flowing at the time you struck or not, upon your investigation at San Pedro? State what they were, and state what you discovered. I don't want you to tell what anybody told you, but state what your investigations were. Did you examine any water gauges? A. I couldn't do that, but there were others that did.

Q. 18. You didn't examine these water gauges with them? A. No, sir.

Q. 19. How long were you detained, if at all, in consequence of this accident; how many days? A. Well, I think it was about in the neighborhood of about \* three weeks. I wouldn't say for sure, you know.

Q. 20. Since the accident to the "Sailor Boy," on the fifth of January, 1888, have you carried lumber, a cargo of lumber, that contained more moisture than the one you carried then? A. No, sir; I couldn't say that I have. Of course, as I said before, I have seen but very little difference in all the cargoes.

Q. 21. But you have had wet and rainy trips since? A. Yes, sir; you have rain most any time up there.

Q. 22. You have had rain on the trips when you carried deck-loads? A. Yes, sir.

Q. 23. And when you carried as much or more lumber than you carried that time? A. Yes, sir; I have carried more lumber than I did that time.

Q. 24. And has your ship drawn to exceed fourteen feet six inches since then? A. Yes, sir.

Q. 25. How much was the utmost draft of your ship at any time since you have carried lumber. A. Fifteen feet and one inch.

Q. 26. And that was the time that you had not to exceed four hundred thousand feet on board? A. No, sir; three hundred and ninety-three thousand feet, I think.

Q. 27. That was the time when she came to San Francisco? A. Yes, sir. \*

106 Q. 28. (By Mr. PAGE.)—This flooring that you say lies in the shed, was simply put in there to protect it from the weather? A. Yes, sir.

Q. 29. It comes right out of the mill, and goes right into the shed? A. Yes, sir.

Q. 30. And so far as you know all the flooring you had on board on this particular trip when the "Sailor Boy" was injured, had come right out of the mill, and right into the shed, and then right on board of your ship? A. Yes, sir.

Deposition of S. C. MITCHELL, taken on behalf of libellants.

Taken and sworn to before Samuel Rosenheim, a notary public, in and for the City and County of San Francisco, State of California, at 303 California Street, San Francisco, on December 3rd, 1888.

Examination in chief of S. C. MITCHELL, on behalf of libellants.

Q. 1. (By Mr. ACH)—What is your name, age, place of residence \* and occupation? A. My name is Simeon C. Mitchell, my residence at present is in Gray's Harbor, but at the time I sailed the "Sailor Boy," I was residing here, but I have been since then in Gray's Harbor; my age is fifty-eight years and my occupation is a sea captain.

Q. 2. How long have you been engaged in that business? A. Thirty-three years.

Q. 3. Do you know the schooner "Sailor Boy? A. Yes, sir; I know her, I knew her when she was built, and sailed her five years.

Q. 4. Did you sail her when she was laden with a cargo of lumber, at any time? A. Yes, sir; I guess I carried over forty cargoes in her.

Q. 5. Of lumber? A. Yes, sir.

Q. 6. Ordinary lumber? A. Scantling and flooring, as it came.

Q. 7. How much lumber have you carried on the "Sailor Boy?" A. Four hundred and one thousand feet is the most lumber I had aboard of her.

Q. 8. How much water would she draw aft? A. Fourteen feet and six inches is what she drew.

Q. 9. How much water would she draw aft with a cargo of three hundred or three hundred and ninety thousand feet of lumber on board? A. Lumber varies so much in heft that three hundred \* and eighty or three hundred and sixty thousand feet might load her sometimes as deep as four hundred thousand feet would at other times. Ordinarily speaking she ought not to draw more than fourteen feet and four inches with ordinary lumber.

Q. 10. How was she marked on her stern-post, or rudder-post? A. Figures on the side.

Q. 11. Up to what number. A. Up to thirteen. A. There was another number on there but it got knocked off.

Q. 12. About how far would the end of the rudder-post be above the water-line when drawing fourteen feet six. A. About three inches out of water, I should say, as near as I can judge.

Q. 13. Were you at Gray's Harbor at the time she was laden in December, 1887, when Captain Johnson was master of her. A. I was there when she was loading, but I left there and went to Shoalwater Bay, my wife was there.

Q. 14. Did you see the general character of the lumber that was put aboard of her at that time? A. Yes, sir; it was about average heft, as I thought.

Q. 15. You say you sailed for five years? A. Yes, sir.

Q. 16. Assuming that the character of the lumber was as you say, and that she carried between three hundred and three hundred and forty thousand feet of lumber that trip, this ordinary lumber, such as you saw, scantling and flooring, would her draft be over  
109 fourteen feet six? \* A. No, sir; it ought to come under that, with that cargo.

*Cross Examination of S. C. Mitchell.*

Q. 1. (By Mr. PAGE.) What makes the difference, Captain Mitchell, between the differences in weight of different lumber cargoes coming from the same place? A. Well, some lumber has more sap on it than other lumber, and some lumber lays in the water longer than others, the logs. I have seen in Humboldt what we call sinkers, that are so full of water that they wouldn't bear themselves up in the water, and they have to have two sticks alongside to keep them up. That is what we call sinkers. They would weigh about two tons to the thousand, but ordinarily speaking, we calculate a ton and a half to the thousand.

Q. 2. And after lumber is put through the mill it is still susceptible of having the weight increased by the rains, isn't it? A. Having laid in the water so long it has got that heft in it, and it takes time to dry out, and by the time it comes through the mill it don't decrease very much in heft. It is all soaked through, the lumber.

Q. 3. After it has left the mill what becomes of it? After it has left the mill is it piled up on the wharf? A. Yes, sir; it is piled in a body and don't dry out much. It retains its heft. \*

110 Q. 4. And it is at all times subject to all possible moisture there may be in rain storms? A. Yes, sir; they always pile it in a body up there, and it never loses any weight until it is taken and stuck with pieces between them.

Q. 5. O' course there is a difference between the weight of a cargo of lumber that has been exposed to the action of the sun and wind for some time, and a cargo of lumber that is just fresh out of the mill? A. Yes, sir; it makes a difference, of course.

Q. 6. Now, in the course of your experience in carrying these various cargoes did you ever take note of the difference between a cargo that has been taken from a pile which has been exposed to the sun and wind for a length of time, and between that of a cargo which has been wet? A. No, sir; I don't know as I ever took very particular notice about it.

Q. 7. Still there is no doubt in your mind that there is quite a difference? A. Yes, sir; there is quite a difference.

Q. 8. Do you know whether this cargo was fresh out of the mill, the cargo that was taken by Captain Johnson to San Pedro on the "Sailor Boy"? A. I guess it hadn't laid there long. It had laid a short time I guess, but at that time they were taking lumber away from there as fast as they sawed it.

Q. 9. There was a great demand in the South at that time \*  
111 for lumber? A. Yes, sir.

Q. 10. And at that time in January it was moist weather?

A. Yes, sir; it was moist weather, but the lumber had not laid long enough to receive a great deal of moisture.

Q. 11. But certainly there was no chance of its drying out in that time? A. No, sir; you can't dry any lumber up there in winter time; not out doors.

Q. 12. Isn't it the truth that there is a large difference also, or perceptible difference, between cargoes shipped under similar conditions, one amount of lumber happening to turn out heavier than the same amount of lumber taken out at a different time? A. Yes, sir; and I will tell you the way we have to account for that. As a general thing the lumber that comes out of large logs has more heart in it, and the heart is always the lightest; and sometimes the lumber is sawed out of smaller logs which makes the lumber have more sap, and it is therefore heavier. The more sap there is in lumber the heavier it is.

Q. 13. How old a vessel was the "Sailor Boy"? A. The "Sailor Boy" I launched here six years ago coming this next February.

Q. 14. And during those five years were you in command all the time? A. I was in command all the time. She was hardly  
112 five years \* old at the time—yes, she was about five years old at the time that she struck down there. That was in January? Yes. Well, she was launched the twenty-sixth day of January, next January will be six years, so she was about five years old at the the time.

Q. 15. During the time you were in command of her had she ever had any accident happen to her? A. No, sir.

Q. 16. Had she ever undergone any repairs? A. Oh, nothing to amount to anything, slight. That is, I had her re-calced, and such as that; such as comes under the head of general repairs, but she had never met with an accident to require any extra repairs.

Q. 17. Had her false keel been touched in any way? A. No, sir; it never had touched anything to amount to anything. I got her on a coral reef one time at the forward part and ground her up a little, and had to put a shoe on.

Q. 18. Did you take off the old shoe? A. I took off a piece of the old shoe forward and put on a new piece. I took the old piece off because it was ground up a little where she struck the coral reef.

Q. 19. About what length of her shoe went off? A. Say about twenty feet.

Q. 20. And that was replaced by a new piece? A. Yes, sir.

Q. 21. Did you see it done, or do you simply know it was done? A. Yes, sir; I saw it done myself. I had her on the dock here and had it done.\*

113 Q. 22. You saw it done yourself? A. Yes, sir.

Q. 23. Have you any idea of what the average increase of weight would be in a cargo of lumber on the "Sailor Boy" which was wet as you have described cargoes, over the weight of a cargo of the same number of feet which had been submitted to the process of drying more or less? A. Well, we generally calculate it makes about a quarter of a ton difference on a thousand. We calculate

that when it is dried out pretty well that it will go about a ton and a half to the thousand, and we calculate that ordinary lumber when it has been exposed a little to the wet that it will go about thirty-five hundred pounds to the thousand, and these sinkers that I spoke of about two tons. Lumber that is reasonably dry will go about a ton and a half.

Q. 24. That would be a difference of five hundred weight to the thousand feet? A. Yes, about five hundred weight difference between being pretty tolerably wet, when it was exposed to the rains up there, and lumber that was dried out some by being exposed to the sun.

Q. 25. And that weight of course, if it had so happened that that cargo came from lumber taken from large wood, the difference would be still greater? A. Yes, sir; there is considerable difference, but I don't know what difference it makes in the weight between large trees and small trees. It makes a difference, because small trees have more sap, and in sawing lumber they just take off\* a little on the outside, and there is quite a lot of sap to the  
114 lumber, while in large timber they don't have that proportion of sap.

Q. 26. Had you been running from Gray's Harbor during all three years that you have spoken of, or from different ports? A. No, sir; I run two years of the time to Shoalwater Bay, which is the next port this side of Gray's Harbor, and then I made one Island trip that I was seven months on, the South Sea Islands. I went to the Fiji Islands, and Samoan Island, and Marshall Island. Marshall Island is where I got on the rock. The biggest part of that time though I ran to Gray's Harbor,

Q. 27. From your knowledge of the business at Gray's Harbor—you can state the fact, I suppose, as it is. As I understand it, during the early part of those five years, that is, until the last year, the amount of lumber exported from Gray's Harbor was much less than it was during the last year. That is to say, that lumber would be piled up and dry out in the first four years of your experience much more than it was in the last year of your experience, when the demand for lumber in the southern part of the State came up? A. Yes, sir; the first two years when I ran the "Sailor Boy" it was about the same as it is now; there was not very much demand, but they hadn't a quarter as much cut there then. There two years' time—and that was the time when Captain Johnson took the  
"Sailor Boy" from me—when there was very little chance for lumber to accumulate on the wharf,\* because there was vessels  
115 there to take the lumber as fast as it was sawed out, and so it didn't accumulate the way it does now.

Q. 28. You had never been down to San Pedro yourself in the "Sailor Boy" yourself, had you? A. Yes, sir; I was there once.

Q. 29. In the "Sailor Boy"? A. Yes, sir.

Q. 30. How long before the occasion of this accident? A. That was about a little over a year before Captain Johnson went down.

*Re-examination of S. C. Mitchell.*

Q. 1. (By Mr. ACH.) When was it that you left the "Sailor Boy"? A. It was a year ago about this time.

Q. 2. You left her in December then? A. The first of December.

Q. 3. About a month before this accident occurred? A. Yes, sir.

Q. 4. What condition was she in when you left her? A. In good condition.

Q. 5. When you went down to San Pedro the time Mr. Page interrogated you about, did you carry lumber? A. Yes, sir.

Q. 6. How many thousand feet did you have? A. I think that was the time we had four hundred and one \* thousand feet  
116 on board. I recollect there was one trip we made when we had that much on, and I think that was the trip, and she drew fourteen feet and six inches at that time.

Q. 7. Were you towed over the bar into the harbor? A. Yes, sir.

Q. 8. With that cargo on? A. No, I took off a lighter-load on the outside.

Q. 9. Did Captain Melburg tow you in, the captain of the tug "Warrior"? A. Yes, sir; I think he did.

Q. 10. Did you tell him how much water you were drawing? A. Yes, sir.

Q. 11. What did you tell him? A. Fourteen feet six.

Q. 12. And he told you to lighten up? A. Yes, sir; we had neap tides, low tides at that time, and I thought it was better to lighten her a little because it was low tides.

Q. 13. From your experience, don't you know that pine lumber does not take in the water and grow heavier as other lumbers do? A. Well, not as much as redwood.

Q. 14. Then your estimate as to the increase in weight would not apply to pine lumber, would it? A. It would apply partially to pine lumber, of course, but it wouldn't make as much difference as in redwood, because the more porous the lumber is the more it is susceptible to water.

117 Q. 15. (By Mr. PAGE.) In giving your experience here you have had reference to lumber brought from Gray's Harbor, have you? A. Yes, sir.

Q. 16. (By Mr. ACH.) Have you laden the "Sailor Boy" at times with wet lumber, with lumber that was quite wet? A. Oh, yes; I have had all kinds of lumber.

Q. 17. Now, assuming that you had a cargo of wet lumber aboard of three hundred and sixty-five thousand feet, principally pine, without any sinkers, would she draw to exceed fourteen feet and six inches? A. No, sir; I wouldn't say so. I wouldn't say that she would draw more than that with pine lumber, at any time. I don't think I ever had more than that.

[Endorsed:] Published and filed August 24th, 1891.

SOUTHARD HOFFMAN, *Clerk.*  
By J. S. MANLEY, *Deputy Clerk.* \*

118 In the United States District Court, Northern District of California.

THE S. H. HARMON LUMBER Co., Libellants, }  
 vs.  
 STEAM TUG "WARRIOR." }

It is hereby stipulated and agreed that the testimony of Edward Jahnsen, a witness sworn and examined on behalf of the libellants, may be taken by SAMUEL ROSENHEIM, a Notary Public in and for the City and County of San Francisco, State of California, at his office, room 7, No. 303 California street, in said City and County and State on the 12th day of Feb., 1889, commencing at 2 o'clock P. M. of said day, being taken in short hand, and that the shorthand reporter's notes may be transcribed, and when so transcribed the same may be read in evidence on the trial of this cause as the deposition of the witness, subject to all legal objections to questions or answers, except as to the form thereof.

It is also stipulated and agreed that the reading of said deposition of the said witness, his signature to the same and all notice of the taking of said deposition and other formal requirements be and the same hereby are waived.

Dated this twelfth day of February, A. D. 1889.

ROTHCHILD & ACH,  
*Proctors for Libellant.*  
 PAGE & EELS,  
*Proctors for Claimant.\**

119 Deposition of Edward Jahnsen:

Taken and sworn to before SAMUEL ROSENHEIM, a Notary Public in and for the City and County of San Francisco, State of California, at 303 California street, San Francisco, on February 12th, 1889.

Edward Jahnsen, a witness called on behalf of Libellant, being duly sworn, deposes and testifies as follows:

*Direct Examination.*

By MR. ACH—Q. Captain, your name is Edward Jahnsen? A. Yes, sir.

Q. Your occupation is that of a sea captain? A. Yes, sir.

Q. Your age is— A. Going on thirty-three.

Q. Where do you reside? A. 173 Francisco street.

Q. In San Francisco? A. Yes, sir.

Q. Are you the Master of any vessel? A. Of the steamer Alcatraz; yes, sir.

Q. How long have you been Master? \* A. Since she  
 120 was launched, about twenty months.

Q. How long was you a ship master before that? A.  
 Two years.

Q. How long on this Coast? A. About twelve years.

Q. Where does your steamer go to? A. She is in the coasting trade; to San Diego county and San Pedro.

Q. You are here only temporarily then? A. No, my vessel is here, discharging.

Q. Then you sail away from here? A. Yes, sir.

Q. Where you at Wilmington on the 5th day of January, 1888, with the steamer Alcatraz? A. Yes, sir.

Q. Do you know the schooner Reporter, Captain Madsen? A. Yes, sir.

Q. Do you the schooner Sailor Boy? A. Yes, sir.

Q. And Captain Johnson? A. Yes, sir.

Q. Do you know what the condition of the tide was on the 5th day of,—rather were you in Wilmington when the schooner Reporter came in over the bar in tow of the tug Warrior, on the 5th of January, 1888? A. Yes, sir.\*

121 Q. Where were you at that time? A. Right at the end of the railroad wharf, outside of the railroad office.

Q. After the schooner Reporter had passed the railroad wharf, after the tug Warrior had let go of her, and started out for the Sailor Boy, did you look at the tide gauge? A. I was looking at the tide gauge long before, was watching the tide gauge.

Q. What was the condition of the tide as indicated by the tide gauge after the tug Warrior started back after the Sailor Boy. A. It was ebbing.

*Cross Examination by Mr. Page:*

Q. How long have you known Captain Johnson, of the Sailor Boy? A. About ten years.

Q. Intimately? A. Yes, pretty well acquainted. We sailed from one place. I was mate. We used to run from one place eighteen months.

Q. You used to meet him frequently at that time? A. Yes, sir.

Q. Have you had any discussions with him, have you talked with him about this matter? A. Well, we talked about it; sailors generally do. We talked about how it was done.

Q. Did you observe with the naked eye as to whether or not the tide was ebbing at the time you noticed the tide gauge, or did you rely on the tide gauge? \* A. When the tide is ebbing or  
122 flowing we can see, we can see if the water is running out.

Q. If you could see if the water was running out, why did you look at the tide gauge? A. To see how much had run out.

Q. How much had run out? A. I figured between six and eight inches, but just exactly to the inch or half inch I could not tell, but six inches anyhow.

Q. Where was this tide gauge? A. There was one underneath the wharf and one on top of the wharf. We looked at the gauge on top of the wharf. When the tide was up it raised the pole up, and when it falls the pole goes down. Marked on the pole you see the feet, and I think in inches,—you see in feet anyhow, how high the tide raises or falls.

Q. Did you notice by examination of the pole that it fell at least six inches? A. Yes, sir.

Q. You took special notice of that? A. Yes, sir.

Q. Who was with you at the time? A. Captain Hanna and Captain Welt, the Pilot of the Port. Captain Hanna, I think, at

that time was Master of the Eureka,—either the Eureka or the Los Angeles.

Q. Did you see the Reporter come in? A. Yes, sir.\*

123 Q. Were you on the wharf at the time? A. Yes, sir.

Q. Was it before you saw the Reporter come in to the wharf, or after you saw the Reporter come in to the wharf that you looked at the tide gauge? A. Before the Reporter came in.

Q. Had the tide then fallen six inches? A. No, not when the Reporter came in.

Q. Was it then an ebbing tide? A. Just about slack water the Reporter came in. May have been a little ebb, may have been a little flood.

Q. The Reporter went up beyond the wharf? A. Yes, went up along the wharf, along the bar. She towed by the railroad wharf where I laid, where I stayed. Where she went to and discharged I do not remember, I did not take any notice.

Q. Don't you remember that she was cast off by the tugboat three or four hundred yards before she got to the railroad wharf? A. That is pretty near always the case.

Q. So the Reporter was cast off by the tug boat several hundred yards before coming up to the railroad wharf? A. I don't know how many.

Q. Several, one, two, three or four? A. I do not know whether several hundred yards outside, I did not take notice.

Q. If the Warrior let the Reporter go three or five hundred yards away from the wharf, from the railroad wharf,\* and if  
124 the Reporter then drifted up to the San Pedro Lumber Wharf, which was a good distance from there, the tide could not have been ebbing then? A. I don't know.

Q. How could she get there? A. Whether she drifted up or was hauled up I don't know, if

Q. If she drifted up three or five hundred yards there must have been a flood tide? A. Yes, if she drifted up. I don't know anything about it. I did not take notice, and cannot tell you whether she discharged at the railroad wharf or the San Pedro Wharf. I do not know.

Q. Did you look at the gauge more than once? A. Yes, I looked at it right along. We have to watch the gauge right along to see how high the water gets. Of course I run over that bar so much that I watch right along to see how high it goes. We do not use any poles or anything. It is to my benefit to see how much water is on the bar, and I always watch it.

Q. How high did the water get? A. You can't exactly go by the gauge. It is generally two feet more on the bar than on the gauge. If it is fourteen on the gauge, it is sixteen on the bar.

Q. That is to say the gauge is not an indication of the bar, because the bar has been dredged out since the gauge was put there?

A. The bar had got deeper through the tide washing it out\*  
125 since the gauge was put there.

Q. So the gauge is not true? A. You can't tell on the gauge whether it is rising or falling after going up so high.

Q. How far is it from the place where the gauge is to the outer

bar? A. That I cannot tell you. It must be half a mile, something like that; I do not know exactly how far, but I judge about half a mile.

BY MR. ACH—Q. To the outer bar? A. Yes, may be more, may be less.

BY MR. PAGE.—Q. When you looked at the gauge and found that the tide had fallen at least six inches, I understand that the Warrior had just cast off the Reporter and gone? A. I say when the Sailor Boy struck on the bar; that is what I say. It takes some time to take hold and come in there. When the Sailor Boy got in I looked at the gauge and saw the water had fallen about that. I did not say when the Reporter got in. I did not notice then.

Q. When the Warrior went up did you notice that the tide had fallen then? A. No, sir; I seen how high the water was at the time when the Warrior went out after the Sailor Boy, and seen how high the water was when the Reporter came in. When the Sailor Boy went on the bar the gauge had gone down about six inches. I said to Capt. Hannah it fell about eight inches, and Capt. Hannah said it fell about six. I said all right. \*

126 Q. Then you did not notice that the tide had fallen until you looked, when you saw the Sailor Boy pounding on the bar? A. No, sir.

Q. How long after the Sailor Boy reached the bar was it that you first saw her pounding? A. She struck right on the bar when the tug had her in tow, in the very shallowest place, past Dead Man's Island.

Q. Right there in the channel? A. Whether it was in the channel or out of it, I don't know. I don't know anything about that.

Q. Then, if in your direct examination you said that at the time the Warrior cast off the Reporter and went down to get the Sailor Boy, then you noticed by the tide gauge that the tide had fallen, you were mistaken, were you, and want to correct that now? A. No, my statement is just the same. I say when the Sailor Boy struck on the bar, I saw the tide had fallen.

Q. If you said in your direct examination in answer to a question by Mr. Ach, that at the time the Warrior started to go out for the Sailor Boy you noticed the tide gauge had gone down six to eight inches, you want to correct that and say you noticed it when the Sailor Boy struck? A. I do not want to correct anything.

Q. Then you did not say in your direct examination that when the Warrior left to get the Sailor Boy you looked at the gauge and then saw it was six to eight inches fallen? A. I said it  
127 looked to me like slack water. Any sailing \* man would know the difference.

Q. Now you say that at the time the Warrior threw off the Reporter, in your judgment it was slack water? A. Yes, sir.

Q. How much water is there on the outer bar? A. That is according to the tide, spring or neap tide. At spring tide now I suppose nineteen feet of water.

Q. It was almost this time last year this thing happened. A. Yes, about, I suppose.

Q. Well, now what would be the amount of water on the bar on the 5th day of January? A. According to my own knowledge I can't tell you. I could tell you from the almanac.

Q. You cannot tell now simply from your own knowledge? A. No, I cannot. I can go in on one-half tide any time. I have not sounded the bar and I draw thirteen and one-half feet.

Q. Do you know at what time it was high water that day? A. Somewhere around noon, whether twelve o'clock or one o'clock I could not tell now. I can tell by looking at the log book. I can tell when I went in, two hours before high water.

Q. What were you drawing? A. Thirteen and one-half feet.

Q. Do you know what time it was when the Sailor Boy struck? A. I think, if I ain't mistaken, somewheres around two o'clock?

128 Q. Before two or after? \* A. I could not tell whether before or after. It may have been a half hour before or a half hour after. I had started to discharge after dinner. Somewhere around two o'clock. I can tell you if I look at my log book. Then I can tell you close to it, inside of fifteen minutes. Now, I cannot tell you whether a half hour before or after. When I looked at the gauge I seen the water had fallen when the Sailor Boy struck on the bar, that is all I know about the whole business.

Q. Do you know how much water was on the bar when you went over it that time? A. I think there was a foot of water underneath my keel. I did not sound the bar when I came in. I run there a good deal and know the bar pretty well, I can see when I can float in and when I can't get in.

#### *Re-direct Examination.*

BY MR. ACH—Q. Do you recollect how the wind was on that day when the Reporter passed you? A. I think southwest.

Q. Would not the wind, with the headway that the Reporter received from the tug, say she had been towed from a mile outside the outer bar to the inside bar, to within a few hundred feet or yards of the railroad wharf; would not the headway she got, together with the southwest wind, take her up to the San Pedro dock? A. The headway and the wind, I think,—I can shoot my vessel, it is no trouble to shoot right up if the tide is slack. \*

129 Q. Had the tide just turned? A. Well, when the water stands still a little that is what we call slack water.

Q. Suppose the tide had commenced to ebb, would it run strong right at once? A. No; when it started in it did not run very fast, but in a few minutes she runs strong.

Q. Suppose it had just commenced to ebb, would not the headway the Reporter got, assuming the Warrior let go of her a few hundred feet below the wharf, the railroad dock, together with the southwest wind, would not that carry her to the dock? A. She would shoot a long way, the way would amount to some, but the wind in there did not amount to much. I do not know exactly how far it would shoot.

Q. What is the distance from the railroad wharf to the San Pedro Wharf? A. I do not know. The San Pedro Wharf is along a little further when you go past you could get a line in and make fast and haul into the wharf.

Q. Captain Hanna was with you. A. Yes, sir.

Q. Could you see from your position on the Railroad Wharf, could you see the Sailor Boy before the Warrior took hold of her on the outside? A. Yes, sir.

Q. Was there any obstruction between you and the bar  
130 where the Sailor Boy lay outside? \* A. No; the way was clear.

Q. Q. You saw the Sailor Boy when the Warrior took hold of her? A. Yes, sir.

Q. Did you anticipate any trouble? A. I never figured on that; I noticed nothing before I saw the vessel thumping on the bar.

*Re-cross Examination.*

BY MR. PAGE—Q. About how far was it from the railroad wharf to the San Pedro Wharf? A. I suppose four or five cable lengths, five or six.

Q. How many feet is a cable? A. About one hundred and twenty fathoms to a cable, six feet to a fathom.

*Re-direct Examination*

BY MR. ACH.—Q. That makes about one hundred and twenty fathoms to a cable, about three thousand feet, about half a mile? A. Yes, about half a mile.

Q. The Sailor Boy was about a mile outside? A. About.

Q. Did you see her when she first struck? A. Yes, sir.

Q. On the outer bar? A. Yes.

131 Q. What was the cause, not water enough? \* A. If there had been water enough she would not have struck. There was not water enough where she was.

Q. It was not good pilotage to take her in on an ebb tide? A. Well, I would not go in there on an ebbing tide myself, but I have done it about three months ago.

Q. You did not go in with a tug? A. No, we never tow.

Q. It would be bad management to go in on an ebb tide? A. I do not like to go in on an ebb tide.

[Endorsed:] Published and filed August 24th, 1891.

SOUTHARD HOFFMAN, *Clerk.*

BY J. S. MANLEY, *Deputy Clerk.* \*

132 Deposition of C. F. Hall, taken on behalf of claimant.

Taken and sworn to before Southard Hoffman, a commissioner of the United States Circuit Court for the Ninth Circuit and Northern District of California at 318 California Street, San Francisco, on the 19th day of August, 1891.

## COUNSEL APPEARING:

Messrs. Page &amp; Eells, Proctors for Claimant.

E. W. McGraw, Esq., Proctor for Libellants.

C. F. HALL, called for the claimant, sworn.

MR. PAGE.—Q. What is your name, age, residence and occupation? A. My name is C. F. Hall, age 35, residence 1022 Castro street; occupation, master mariner.

Q. How long have you been a master mariner? A. I have been a master mariner a little over eight years.

Q. Have you been running in that time in any particular employ? A. In Goodall, Perkins & Co's employ entirely. \*

133 Q. That is the Pacific Coast Steamship Company? A. Yes, sir.

Q. Are you acquainted with the San Pedro bar? A. Yes, sir.

Q. For how long a time have you been acquainted with it? A. I have been running down there steadily since 1886.

Q. That is, for the last five years? A. Yes, sir.

Q. And during that time, in what class of vessels? A. I have been on the "Bonita," the "Los Angeles," the "Eureka" and the "Newbern."

Q. All steamships of the Pacific Coast Steamship Company?

A. Yes, sir; and the "Pomona" and the "Corona."

Q. Were you accustomed to go over the bar in those steamers?

A. Yes, sir.

Q. About how often during these five years on the average would you be crossing the bar at San Pedro? A. For the last three years or a little over three years and a half, I have been crossing it twice every day; that is four times every eight days, making the round trip between here and San Diego, and San Pedro.

Q. That is going in and out it would be four times every eight days. A. Yes, sir.

Q. Is the bar to-day, in the same condition, with reference to depth, that it was five years ago? \* A. It is deeper now.

134 Q. Do you know what was the depth of the bar in 1888? A. At what time in 1888?

Q. At the beginning of the year? A. At mean tides on the outer bar at San Pedro, there was about sixteen feet of water.

Q. And at large tides? A. At large tides there was about 18.

Q. Have you any recollection of any particular time when you went in over the bar in February, 1888. A. I went on the 27th of February, 1888, over there with the steamship "Newbern."

Q. What was the steamship drawing at that time? A. She was drawing a little over 15 feet of water; 15 feet strong.

Q. At what stage of the tide did you go over the bar? A. We went over the bar about two hours before high water.

Q. Did you get over the bar with or without striking? A. Yes, sir; without striking.

Q. What tide was it? A. It was a large tide. There would have been 6 feet 2, of raise, at high water, of that tide.

Q. About how much would the raise be, at the time that you

went in? A. Well, there would have been about 16 feet of water on the bar when I went in. \*

135 Q. What would be the difference in point of depth, between high tide on that day, and the time that you went in? A. There would have been a foot and 9 inches more.

Q. Can you tell by reference to the almanac, and your knowledge of the bar of San Pedro, what amount of water there was on the outer bar there at 15 minutes past two on the 5th of January, 1888? A. About 15 foot, 9.

Q. The depth was 15 foot, 9 inches? A. At high water on the 5th, about 2, 9; and there would have been about 15 feet, 9 inches on the outer bar.

Q. After the high water, how long is it, before there is any appreciable change in the depth of the water? A. The first half hour you would not notice much of any. It would not be an inch difference.

Q. That is what is called slack water? A. Yes, sir.

Q. And precedes as well as succeeds each high tide? A. Yes, sir.

Q. When the tide is 15 feet and 9 inches, what difficulty would there be in taking in a sailing vessel drawing 14 feet, 6 inches, if any? A. There would not be any difficulty, not at slack water.

Q. What would be the chances of her touching at that time, on the outer bar. A. If it was very rough, a southerly swell, there would be chance of her touching, but in smooth water, she  
136 would \* not touch.

Q. When you speak of a heavy sea, which would be necessitated, in order to make a vessel touch under those circumstances, what sort of a sea do you mean, and whether or not it would have to be accompanied by any wind? A. No, sir; it does not have to be accompanied by wind. They get swell without wind—ground swells come in without any wind, but it would be after a heavy storm, then there would be a heavy ground swell.

Q. Then when you speak of a heavy sea, do you mean a sea that succeeded some kind of a storm? A. Yes, sir.

Q. Is there any particular direction from which the storm would have to be, to make that kind of a swell? A. You take a southeasterly wind or a southwesterly wind, and it would fetch in a heavy swell.

Q. About how wide is the bar there, with reference to crossing it? A. Where the shoal place is, I should judge it was about 250 feet.

Q. How far is it, crossing over the channel. How far does a vessel have to travel in the channel, to get over the bar? A. Over 250 feet, I should judge. That is, the shoalest place on what we call the bar.

Q. When you speak of the shoalest place, you speak of the bar, and not a shoal place on the bar? \* A. The shoalest spot  
137 on the bar; all the other water is just about the same right along.

Q. Is a heavy sea a usual thing or an unusual thing on the bar?

MR. MCGRAW—I object to the question as immaterial and incompetent.

A. It is unusual.

MR. PAGE—Q. To what extent have you sounded that bar, if at all. A. I have sounded it very often in the last five years. I have gone out there at extreme low water, and sounded it quite often when I have been lying in there discharging.

Q. These figures that you have given us, of what are they the result, as with reference to the depth?

MR. MCGRAW—I object to the question as incompetent.

A. That is what I go by, the water that I found out there, and the raise of water which the tide table gives.

MR. PAGE—Q. It is the result of your own soundings then? A. Yes, sir.

MR. MCGRAW—I move to strike out the last answer as irresponsible to the question, and as being a theory of the counsel and not of the witness.

MR. PAGE—Q. Do you know the Railroad Wharf down at San Pedro? A. Yes, sir.

Q. Have you been upon it yourself at times? \* A. Yes, 138 sir; we always lay at it.

Q. From that Railroad wharf, is it possible to determine the exact condition or state of the water on the outer bar? A. In which way, the roughness?

Q. Yes, sir? A. No, sir; not unless it is very rough. You could tell if it was very rough.

Q. If it is very rough, you can see that it is rough? A. Yes, sir; on the wharf you cannot see where the bar is; Deadman's Island hides it, but you could tell from the Spit beyond, when it is very rough. You could not tell exactly how the water would be on the bar.

Q. Do you know the gauge at the wharf? A. I know the gauge that we put in ourselves there—the Pacific Coast Steamship Company.

Q. What sort of a gauge is that? A. It is a gauge, that is a large copper tank, with a slide up through the wharf, alongside of the Railroad building, and it is marked from up above, which gives the gauge of the water out on the bar; that is, it did at the time it was put down, about ten years ago.

Q. Is there any difference between the actual condition of the water now on the outer bar, and what is shown on the gauge? A. Yes, sir; there is about 5 feet now. At the time you were asking me about, that is, in 1886, there was only about 2 feet, or 2 feet, 6 139 difference in that gauge. Somewheres \* along there. There was more water than that gauge showed on the outer bar.

Q. How much more water was there on the outer bar than was shown in January, 1888, on that gauge? A. In 1888?

Q. Yes? A. About 2 foot more.

Q. That is on the outer bar? A. On the outer bar.

Q. By merely glancing at that gauge, is it possible for a person to tell whether at that moment, the tide is going in or going out? A. No, sir; they cannot, by looking at the gauge, unless the watch

it sharply. They would have to take a pencil and mark it, and then they could tell if it was going down.

Q. That is, they would have to stay and watch it for some time?

A. Yes, sir.

Q. Do you understand the process of taking the depth of water on the bar, with a pole, as a small vessel goes along? A. Yes, sir; taking it on a tugboat, you can get accurate soundings with a pole; they are so low in the water.

Q. What would be the process? Would they do anything with the steamboat? A. They would have to run her slow.

Q. And then put the pole over the side? \* A. Yes, sir; 140 they could not get accurate sounding by running at full speed; by running slow they could.

Q. Would these soundings be accurate or inaccurate? A. Yes, sir; accurate.

Q. You are going to sea to-morrow? A. Yes, sir.

*Cross Examination.*

By Mr. McGRAW—Q. What do you call fast or slow, when you are taking soundings on a tug with a pole? A. I should call slowing her down, dead slow, or stopping the engines altogether.

Q. How many feet a minute would you call fast, and how many would you call slow? A. I should call slow, as slow as you could possibly go without stopping the engines altogether.

Q. What would you consider running fast? A. The boat going at full speed. Say a boat making 7 or 8 miles an hour, which they would be making going out there.

Q. Supposing that the tug was making 20 lengths a minute? A. That would be going full speed, about as fast as they could go.

Q. Suppose she was going one length a minute? A. They could take soundings then.

Q. Suppose she was going five lengths a minute? \* A. 141 Five lengths a minute, I would not say very good soundings could be taken. They would not go that fast and take soundings.

Q. Then the accuracy of the sounding on the tug, would depend on the speed at which she is going? A. Yes, sir.

Q. There are hog-backs on that bar? A. There is only one place where there is a shoal place going out in the channel.

Q. Crossing that, going out to sea, how wide is that shoal place? A. About 200 feet.

Q. All the same depth, all the way through? A. About; yes, sir.

Q. I don't mean about? A. It does not vary six inches on this shoal place; it would not vary six inches in the channel.

Q. How often have you measured that? A. I could not say how often. I cannot tell exactly how often, but I have been out there a great many times.

Q. When did you ever measure it? Specify some time. A. I could not give the date.

Q. Did you ever do it in your life? A. Yes, sir.

Q. When? Give some year. A. In 1885 I went out there. I could not tell you the date, or even the month. In the year 1888 I went out there \* a good many times. In the year 1887, 1888 and 1889 I went out there.

Q. Name some steamer that you were on on some particular trip, where you ever measured it? A. On every ship I have been on since I have been running down there.

Q. I don't know what ships you have been on? A. On the "Bonita," the "Newbern," the "Los Angeles," the "Eureka," on the "Pomona" and on the "Corona."

Q. In January, 1888, what ship were you on? A. On the "Bonita."

Q. How much water did she draw? A. All the way from 13 to 15. That is, I never went in with her drawing 15. I have been in with her drawing 14.6—with the "Bonita."

Q. Do you consider that as much as she was safe to go in with? A. That is the most she was ever drawing to go in. I always had her loaded.

Q. Did you consider that as much as it was safe to go in with? A. I could have taken in more. At some tides I could not have done it, though.

Q. Were you down there in January, 1888, at all? A. Yes, sir; the first of January I was there.

Q. Did you sound the depth of the water at that time? A. I could not say whether I did or not.\*

143 Q. You understand, I suppose, that the rise of the tide mentioned in the Coast Survey Time-table, is the rise over and above the depth marked on the chart? A. Yes, sir: it takes the mean low water.

Q. The depth above mean low water? A. Yes, sir; but from extreme low water it does not give it.

Q. Look at chart 610 of the Coast Survey Chart, and tell us what the mean low water on the outer bar was, at that time. A. 10 feet and three-fourths; 10 feet and a half right on the bar.

Q. Lowest water? A. No, sir; the lowest water is 9 feet, they have got here; that is in towards the island.

Q. That is the lowest water on the outer bar? A. That is the lowest water on the outer bar.

Q. 9 feet? A. Yes, sir.

Q. In the channel? How is it about, in the channel? A. That is not where we used to go over. Where we used to go in was about 10 feet and a half of water on the bar, this shows. There was more water at that time on the bar than this chart shows, by nearly two feet.

Q. How do you know that? A. I measured it.

Q. That chart was published in November, 1888, while this was in January? \* A. Yes, sir.

144 Q. It was taken from surveys made long previous to the issuance of the chart? A. That may be and they may not have correct soundings. I can take in more water now than the engineer down there says they have got now, I went out there at low water the other day. The engineer was on the wharf and says:

"You cannot get out." I was drawing nearly fourteen feet of water. He said: "There is not that water there." I says: "There is." He said he was going to get a chart and give it to me. I went out and never touched.

Q. On January 5th, 1888, at San Diego, you say it was high water at 2 o'clock and 9 minutes? A. 2:9. There is very little difference between San Diego and San Pedro.

Q. Does not the United States table say it was 2:15 instead of 2:9? A. This says 2:9, afternoon tide. A. M. tide it is 2:15; P. M. tide, 2:9.

Q. And the rise was how much? A. I think it was 4 foot 2.

Q. That would make, according to the United States surveys, what? A. 14 feet 8 inches, according to this chart. I claim there is a foot more than that, and more.

Q. You say you did not measure it in January, 1888? A. I could not say whether I did or not; I dont recollect.\*

145 Q. Can you recollect when you did measure it? A. I could not recollect the date nor the month that I did it. I have not got it down and I cannot recollect it.

Q. Can you give us any idea of any time when you ever did measure that bar? A. I measured it in 1888, in that winter. I don't know how many times. Captain Von Helms—he is now in port—and I went out and measured it in the winter of 1888. He was then master of the "Los Angeles."

Q. How did you measure it? A. We took a lead line.

Q. How did you go out, in a small boat? A. In a small boat. We took two sailors and rowed out. We sounded it back and forth all around.

Q. You cannot give any idea when you did that? A. No, sir; then I went out alone a good many times. Another time I went out and I took a tugboat man with me—the Captain of the tugboat. I took him out and I had the first officer of the ship—I took the flag and waved the flag when I wanted him to mark off the sounding on the gauge, to tell how much difference of water there was.

Q. You have been running down there a great number of years, and you cannot tell whether this was in 1888 or some other year? A. Yes, sir.

Q. How do you know it was in 1888? A. I know I went out there in 1888, because Captain Von Helms \* has not run there since that time.

Q. Where is Captain Von Helms now? A. He is on the steamer "Newbern."

Q. Where is he running to? A. Down to Mexico.

Q. Where is he now? A. Down on the Broadway wharf.

Q. As to the time of high water at San Pedro and San Diego, what difference is there? A. There is very little difference.

Q. How much? A. I would not think there was over 10 minutes.

Q. Do you know? A. No, sir; I don't know. I always figure on the San Diego tide.

Q. At which point does the high water come the earliest? A. That I could not say.

Q. You don't know that? A. No, sir.

Q. You don't know whether high water at San Pedro would be earlier or later than at San Diego? A. No, sir; I know it is about the same time. It is near enough to figure on, on the tide table.

Q. You know these approximations of high water are merely approximations. Sometimes high water comes a good many minutes later, and sometimes a good many minutes earlier than is put down on the tide table? \* A. There is a table back there  
147 to tell you. I never have looked at it. I guess that will tell.

Q. I want to know what you know about it? A. There is a table there that tells. I have never looked at that table to see. There is very little difference. I would not think there is over 10 minutes, one way or the other.

Q. At the Railroad Wharf, there spoken of, if there are a number of ship captains watching the gauge, and watching it closely, they could tell whether the tide was rising or falling, by the gauge? A. They could tell by watching awhile. They would have to watch it some while to tell whether it was rising or falling. Take it within a half an hour before high water, and a half an hour after, and there would not be any material difference hardly in the raise or fall.

Q. The tide commences to ebb at the wharf some appreciable time after it commences to ebb on the bar, does it not? A. I don't think there would be any difference in that space.

Q. Is it not a fact that the further you get up stream that the tide is later in the ebb, and later in the flood, than it is lower down? A. Yes, it is; but 500 yards would not make much difference.

Q. It would make some difference would it not? A. Very little.

Q. It would make some? \* A. I don't think it would  
148 make any difference there.

Q. If 500 yards would not make any difference,\* would 5,000 yards make any difference? A. No, sir; a mile would not make a minute's difference.

Q. 5,000 yards would be about three miles? A. I guess not.

Q. Do you know how much a yard is? A. 5,000 yards. I was thinking about 5,000 feet. Yes, it would; 5,000 yards would make a little difference according to where it was.

Q. You say 500 yards would not make any difference at all and 5,000 yards would? Where would the difference commence? A. It would make very little difference; I don't know what difference it would make.

Q. It would make some difference? A. It would not be enough so that you could notice.

Q. It would make some difference? A. It would take somebody who would be keener than me to notice it.

Q. You don't notice these things very closely? A. No, sir; I would not that.

Q. How are the tides down there, as to the accretion of the tides? Do they flow in faster at the start or in the middle or at the tail end of the tide? A. About the middle of the tide, say about two hours flood. That is, when it runs in the strongest.

Q. The last two hours; how is that? Does it run in \*  
149 very strong then? A. Up to the last hour, then it com-  
mences to run in slower.

Q. You say you went in on February 27th, 1888? Have you  
got any document as to the time when you went in there? A. I  
looked at the manifest to see what time it was.

Q. I want to know if you have got any document to show what  
time you went in? A. I have got no documents here to show.

Q. And all you know about the time you went in on February  
27th, 1888, is from looking at some document which you have not  
got here? A. No, sir; we have them in the company's office,  
Goodall, Perkins & Co.

Q. You have looked before you gave your testimony, and found  
that you went in on February 27th, 1888; some two hours before  
high water. You looked at some document which you have not got  
here? A. Yes, sir.

Q. All that you know about it is what that document told you.  
You have no personal knowledge of it now? A. I know when I  
went in there, yes, sir.

Q. You have no recollection as to the time when you went in?  
A. Yes, sir.

Q. What time of day was it? A. It was about seven o'clock  
in the morning.

Q. How do you know? \* A. I know it.

150 Q. How do you know it? A. I was there.

Q. Did you find that out from looking at some document?  
A. No, sir; I did not have to find that out by looking at anything.

Q. You recollect that on February 27th, 1888, you went in about  
7 o'clock in the morning? A. Yes, sir.

Q. Now look at the tide-table for February 27th, 1888, and tell  
us at what time it was high water on that bar. A. February 27th  
it was high water at the bar at 9:20. There were 6 feet 2 inches  
raise of water.

Q. You recollect that, too, without looking at anything? A.  
No, sir.

Q. The amount of raise? A. I should have to look at the tide  
table to see the raise.

Q. You have been down there, you say, two or three times a  
month ever since? A. Yes, sir; ever since that time.

Q. How do you recollect as to that particular trip? A. I car-  
ried in the deepest water that I have ever taken in—drawed the  
most water, and it was the only trip that I ever made in that ship.  
That is why I recollect so well.

Q. How much water did you draw? A. I drew 15 foot  
strong.\*

151 Q. Do you know the time you went in there? A. I  
know the time, because I went there and waited for a while  
before I went in. I wanted to get in so as to go to work at 7  
o'clock.

Q. How did you gauge your time by? A. In what way?

Q. Did you have a clock? A. Yes, sir.

Q. How was your clock set? What time? A. Standard time.

Q. Without any entry in your log-book and without looking at any reference or any memoranda made by you, or anything else, you have a positive recollection now, that on February 27th, you sailed in there at seven o'clock in the morning? A. I said about that time. It was about 7 o'clock. I would not give the exact minute.

Q. It might have been 8? A. No, sir; it was not 8; it was not so late as that.

Q. How do you know? A. I know very well it was not.

Q. How do you know? A. I cannot give any different answer than that. I know it was about 7 o'clock.

Q. You looked at some documents before you came up to testify, did you not? A. No, sir.

Q. Never looked at any document at all? A. I did not to-day; no, sir. \*

152 Q. Not to-day? At any other time before you came up here to testify? A. I have not looked at any documents.

Q. Never looked at the manifest? A. I did not look at the manifest; no, sir.

Q. Never looked at your log-book? A. I have not looked at the log-book.

Q. Then you are testifying that you sailed in there on February 27th, 1888, solely from your own recollection? A. Yes, sir; as near as I can recollect.

Q. You have not looked at any document at all to refresh your memory? A. No, sir; nothing more than I found out the date that I went in there on.

Q. How high do you say the water was at high tide on January 5th, 1888, on the outer bar? A. About 15 foot, 9.

Q. How do you calculate that? How do you know it? A. I calculate that at low water there was about 11 feet of water, 11 feet, 6. Somewhere along there, and then there is 4 foot, 2 raise.

Q. 11 feet, or 11 feet, 6? A. 11 foot, 6; all of 11 foot, 6, on the bar at mean low water at that time.

Q. That would make 15 feet, 8, and not 15 feet, 9? A. Yes, sir; that would make 15 foot, 8. \*

153 Q. You do not know whether it was 11 feet or 11 feet, 6, at low water? You are not willing to swear now whether it was 11 feet, or 11 feet, 7, are you, at low water, on that day. A. That is my judgment. I am going on what I judge there was there, and what I have been out there and got, in measuring.

Q. Which is it, 11 feet, or 11 feet, 6? A. 11 feet, 6.

Q. Why did you say 11 feet, at first? A. Why did I say 11 feet?

Q. Yes? A. I did not intend to say 11 feet.

Q. With a swell on the bar, how much allowance ought to be made for towing in a schooner beyond her draught and bottom? A. It is according to how much swell there is; how rough the bar is. If it is smooth you can tow a ship in where there was not more than 6 inches more than the vessel drew.

Q. 6 inches you think is the outside allowance that ought to be made in smooth weather? A. Yes, sir.

Q. You think it is the outside allowance that ought to be made

in smooth weather? A. Yes, sir; I can go over it with a steamer where there is not more than six inches, and a steamer sucks down more than a sailing vessel in turning her wheel.

Q. You think 6 inches is an allowance that ought to be  
154 made in smooth water for towing vessels? \* A. Yes, sir.

Q. When the bar is rough how much allowance do you think there ought to be between her draught and the bottom? A. In rough weather, you could go in with a foot.

Q. If the bar is breaking, can you go in with a foot? A. No, sir; it would be a little risky, if the bar was breaking, going in with a foot.

Q. If the bar was in such a state that there were white caps making? A. I have seen a smooth bar with white caps on it; that does not signify.

Q. With a southerly swell in there? A. With a heavy southerly swell a foot of water would be too little to go in on, with a loaded vessel.

Q. When a tug-boat is sounding with a pole, the accuracy of her sounding depends altogether on the speed she is going? A. Yes, sir.

Q. If she stops every ten feet, she can sound much more accurately than if she only stops every 300 feet? A. Yes, sir.

Q. Do you think you know anything more about that bar than the pilots on her? A. I think I know more about the bar than the pilot, that is at San Pedro, because he hardly ever goes over it, to pilot any vessels over it. He just goes out and in, in a small boat. He only pilots vessels in to the outer bar. He does not run a ship in there. \*

155 Q. He never sounds? A. That I could not say. I never saw him sound.

Q. You are not there very much? A. I am there quite often.

Q. How long do you stay when you go down? A. Going down I stop there about four or five hours, and have been in the last three years.

Q. In 1888, I am speaking of now? A. In 1888, I used to go in there sometimes and stop all day; sometimes two days.

Q. Every time you used to go in there you used to go out and sound the bar? A. Not every time, no, sir.

Q. How often did you used to do it? A. I could not say how often.

Q. Did you do it more than once a year? A. Yes, sir.

Q. How many more times; 150 times a year? A. No, sir; I did not do it 150 times.

Q. How many times a year did you go out and sound that bar? A. Through 1888, perhaps, I went out there a half a dozen times during the year.

Q. In 1887, how was it? A. In 1887, I don't know how many times I went out; perhaps more times than I did in 1888.

Q. Did you go out in a small boat? A. Yes, sir. \*

156 Q. And sound the bar? A. Yes, sir.

Q. Did you have a pilot bring you in there? A. No, sir.

Q. Piloted yourself in? A. Yes, sir; always piloted myself in.

Q. Do you think your soundings are more accurate than those of the Coast Survey officers? A. I know that they have not got the sounding at all, that is, the amount of water that there is there, they have not got now.

Q. Do you think your soundings are more accurate than those of the Coast Survey officers? A. Yes, sir.

*Re-direct Examination.*

BY MR. PAGE.—Q. It has been your business to sound in order to be able to pilot your steamer right in those waters?

MR. MCGRAW.—I object to the question as leading.

A. Yes, sir.

MR. PAGE.—Q. How much more water did you say there was on the outer bar than is shown by the gauge? A. I said three feet.

Q. If it should appear in your testimony that you said two feet, you mean to correct it and say three feet? \* A. Yes, sir; if I said two feet. It is three feet on the outer bar.

MR. MCGRAW.—Q. What are you talking about, now, or in 1888? A. 1888.

Q. How did you mean to change your testimony from three to two feet? Do you think that the counsel required you to? A. No, sir; the inner bar is two feet inside.

Q. Two feet more in 1888 than the chart shows? A. No, sir; the gauge.

Q. I am speaking about the chart? A. No, sir; I am talking about the gauge.

Q. I am talking about the chart? A. There is more than on that chart. There is a foot and a half more water than that chart shows.

Q. In January, 1888, I am talking about? A. Yes, sir.

Q. How do you say the water was, as compared with that chart, in January, 1888? A. I say that there is a foot and a half more water at mean low water than that chart shows.

Q. In January, 1888? A. Yes, sir.

Q. A foot and a half? A. Yes, sir.

Q. 18 inches more? A. Yes, sir. \*

158.

(It is hereby stipulated and agreed that the foregoing deposition when written out may be read in evidence by either party to the above cause subject to all objections to questions and answers, excepting as to the form thereof, and that all notices of the taking of this deposition, the reading to, and the signature by the witness be waived.)

(Endorsed:) Filed August 20th, 1891.

SOUTHARD HOFFMAN, *Clerk.*  
By J. S. MANLEY, *Deputy Clerk.* \*

159 In the United States District Court, Northern District of California.

S. H. HARMON,

*vs.*

STEAM TUG "WARRIOR." }

It is hereby stipulated and agreed that the evidence of John Peter Melburg, a witness sworn and examined on behalf of the respondents, may be taken in shorthand by H. DARNEAL. That the short hand reporter's notes may be transcribed and when so transcribed, the same may be read on evidence on the trial of this cause as the deposition of the witness, subject to all legal objections to questions or answers, except as to the form thereof.

It is further stipulated that the reading of said deposition to the witness, and his signature to the same, and all notices of taking deposition and other formal requirements be waived.

HENRY ACH,  
*Proctor for Libellants.*

PAGE & EELS,  
*Proctor for Respondents.\**

160 In the United States District Court, Northern District of California.

S. H. HARMON

*vs.*

STEAM TUG WARRIOR }

July 20, 1888.

Present:

HENRY ACH, *Proctor for Libellants,*

CHAS. PAGE, *Proctor for Respondents.*

Examination in chief of JOHN PETER MELBURG, a witness on behalf of Respondents.

(By MR. PAGE)—Q. 1. What is your name, age, residence and occupation? A. My name is John Peter Melburg. Age, 38. Residence, San Pedro. Occupation, Master.

Q. 2. How many years have you been going to sea? A. 25 years.

Q. 3. In what trade? A. Sailing vessels and steamers.

Q. 4. Deep sea vessels? A. Yes, sir.

Q. 5. Coasting vessels also? A. Yes, sir.\*

161 Q. 6. Have you been connected with steamboats? A. Yes, sir.

Q. 7. For how many years? A. 15 years.

Q. 8. Are you now Master of any tugboat, or were you recently?

A. Recently I have been Master of a tugboat.

Q. 9. Of what tugboat have you recently been Master. A. The Warrior.

Q. 10. Engaged where? A. At San Pedro and of the steamer Falcon.

Q. 11. Where was she engaged? A. At San Pedro,

Q. 12. How long have you been Master of tugboats? A. Five years.

Q. 13. During those five years at what place were you engaged as Master of tugboats? A. At San Pedro.

Q. 14. Is that the same as Wilmington? A. San Pedro and Wilmington.

Q. 15. What was the nature of the service that the tugboats rendered at San Pedro? What did they do? A. Towing vessels from their anchorage into the harbor. San Pedro and Wilmington.

Q. 16. And from San Pedro back outside? A. Outside.

Q. 17. Is there a bar there? A. Yes, sir; two bars.

Q. 18. Do you remember a sailing vessel called the Sailor Boy? A. Yes, sir; I do.

Q. 19. Did anything occur to her during this last year at\*  
162 Wilmington? A. Yes, sir.

Q. 20. What connection if any had you with the Sailor Boy at that time? A. Towing her in from the outside.

Q. 21. Of what vessel were you then in charge? A. Of the steam tug Warrior.

Q. 22. Do you remember on what date this was? A. Yes, sir; on January the 5th, 1888.

Q. 23. Now will you tell in your own language exactly what happened to the Sailor Boy, say when you started from Wilmington, where you met the Sailor Boy, what you did, and generally what passed up to the time that she was returned to her wharf? A. I will state about the other vessel, too?

Q. 24. State the whole transaction. A. I left San Pedro wharf at half past 12, going out to the anchorage, to take the schooner Reporter in. I was on the bar at one o'clock. At that time, taking the Reporter across the Captain of the Sailor Boy came along side and asked me if I would take him in. I asked him her draft. He said  $14\frac{1}{2}$ . I told him to get ready and I would come right out after him.

Q. 25. What draft did he say? A.  $14\frac{1}{2}$  feet. I took the Reporter in and left her in the river and went out after the Sailor Boy. Going out I sounded the two bars. The first sounding was 15 feet 9 on the inside bar. The second sounding, 15 feet 6, and the third sounding, scant 15.

163 Q. 26. Those are all inside bar soundings? A. Yes, sir.

Q. 27. And on the outside bar? A. The outside bar the first sounding was 16 feet 8. The second sounding 16 6. The third sounding 16 4, and the fourth sounding 17 feet.

Q. 28. What did that fourth sounding indicate to you? A. That was on the outside of the bar.

Q. 29. That you had got over the bar into deep water? A. Yes, sir.

Q. 30. What did you do for the purpose of getting those soundings? A. To make sure that there was enough water for the Sailor Boy.

Q. 31. Now what did you do with your steamship for the purpose of ascertaining correctly what the soundings were? Did you

take them as you went along? A. No, sir; I stopped the vessel, stopped the steamer; stopped the machine and let her slide along.

Q. 32. What did you sound with? A. With a pole? A 24 foot pole.

Q. 33. I understand you stopped the engine and let her keep her headway? A. Yes, sir; stopped the engine and let her keep her headway.

Q. 34. Who handled the sounding rod? A. My mate.

Q. 35. At the time where were you? A. I was there close to him. I saw the sounding.

Q. 36. You saw the soundings yourself? A. Yes, sir.\*

164 Q. 37. Were they also reported, sung out? A. Yes, sir.

Q. 38. Now what time was it that you said you started to go out to get the Sailor Boy? A. About fifteen minutes past one I believe, as near as I can come to it.

Q. 39. How long before high water was it when you were sounding? A. That was about an hour before high water.

Q. 40. About how long does it take to get over the bar without a tow, sounding and all? A. Sounding and all takes five minutes on each bar; about ten minutes for the bars, sounding.

Q. 41. When you got outside over the bar, what did you do with reference to the Sailor Boy? First, let me ask you about how far away was the Sailor Boy from the outer bar? A. A mile and a quarter as near as I can judge.

Q. 42. Was she then lying at anchor? A. Yes, sir.

Q. 43. At the time you got to her was she then at anchor? A. No. He had his anchor lifted. Drifting.

Q. 44. What did you do? A. Gave him my hawser.

Q. 45. How long did it take you to give him your hawser? A. About five minutes.

Q. 46. What kind of a hawser was it? A. An 8-inch hawser, brand new; only used it twice before; used it about an hour. That is all I had used that hawser before.

165 Q. 47. Now, about as near as you can tell, how long was it from \* the time that you left the outer bar to the time that you returned to the outer bar? A. About 25 minutes.

Q. 48. What time was it when you returned to the bar, when you got back to the bar? A. The Sailor Boy struck about five minutes past two.

Q. 49. It was five minutes past two? A. Yes, sir.

Q. 50. How do you know that was the time? A. I looked at my time as soon as she struck.

Q. 51. What was the condition of the tide at that time? A. Just high water. About fifteen minutes before high water.

Q. 52. Aside from your knowledge of the tides is there anything by which the ebb and flow of the tide is indicated in those channels? A. Yes, sir. Buoys.

Q. 53. How are they affected by the tide? A. It will turn them around as the tide runs one way or the other.

Q. 54. That is, they drag on their moorings in the direction of the ebb or flow? A. Yes, sir.

Q. 55. As the case may be. On this occasion what was the con-

dition of those buoys if you noticed them? What did they indicate? A. They were turned in towards the river.

Q. 56. What does that indicate, that the tide was ebbing or flowing? A. Flowing.

Q. 57. That it was still flowing? A. Still flowing.\*

166 Q. 58. Now if anything happened at the time you brought the Sailor Boy to the bar, what happened to her? A. She struck on the bar.

Q. 59. On the edge of the outer bar? A. On the edge of the outer bar.

Q. 60. At that time where was the steam tug Warrior? A. Right ahead of her, towing her.

Q. 61. What sort of hawser had she? I mean in length. A. About 25 fathoms.

Q. 62. Was she straight ahead? A. Yes, sir; straight ahead.

Q. 63. Why didn't you have any longer hawser than that? A. I couldn't use any longer hawser.

Q. 64. Why? A. The channel would not allow me. It was too small; too narrow.

Q. 65. That is, with a longer hawser you could not keep straight ahead of her? A. No, sir.

Q. 66. Why couldn't you use a shorter hawser? A. I could not for then I would part the hawser, towing with a short hawser.

Q. 67. There is danger of snapping with a short hawser? A. Yes, sir.

Q. 68. Could you go alongside? Tow alongside? A. No, sir; we never do.

Q. 69. What is the reason of that? A. Too much swell on the bar.

167 Q. 70. That was the usual length of hawser you had at the time? \* A. That is the usual length of hawser.

Q. 71. About what is the width of the channel on the outer bar into which you tow a vessel? A. Between 50 and 60 feet, the deepest water.

Q. 74. That is the channel I suppose where the deepest water is. For what distance does the vessel tow over that outer bar? A. About 30 to 35 feet.

Q. 75. Then you got into deep water again? A. Yes, sir.

Q. 76. Now is the next bar, the inner bar as you call it, directly in line with the outer bar, or do you turn either way? A. No, sir; I turn. Port my helm and turn southwards.

Q. 77. Then cross the inner bar? A. Then cross the inner bar.

Q. 78. So that the inner bar is virtually at right angles to the outer bar? A. Yes, sir.

Q. 79. About what distance do you run from the outer bar to the inner bar before you strike the inner bar? A. About two hundred or three hundred feet.

Q. 80. When the Sailor Boy struck, how did she strike? Hard or gentle? A. Soft. Gentle. I was going slow at the time she struck.

Q. 81. Is that usual, to go slow? A. Yes, sir; that is usual.

All vessels I tow in and out the same way, go very slow with them as I did, over the bar.

Q. 82. I understand you have been five years towing ves-  
168 sels over the bar? \* A. Yes, sir; I have.

Q. 83. Now, after she struck what did you do? A. After she struck I hooked the steamboat on to tow her over.

Q. 84. Hooked her on so as to force her over the bar? A. Yes, sir; I had no room to turn around with her at that time.

Q. 85. If you had attempted to turn around what would have happened? A. She would have gone right down on the Island.

Q. 86. The Island was about how far away; what Island was it? A. Dead Man's Island.

Q. 87. About how far away from the spot where she struck? A. About 35 or 40 feet.

Q. 88. I understand you to say if you attempted to turn around while you were trying to get back to her and turn around she would have been drifting on the Island? A. Right on the Island.

Q. 89. What would have sent her on there? A. The swell.

Q. 90. The swell coming in from the ocean? A. Yes, sir.

Q. 91. Under those circumstances what was there for you to do? A. To go right ahead.

Q. 92. And take her over the bar if possible? A. Yes, sir.

Q. 93. As a matter of fact you say you did go ahead? A. Yes, sir.

Q. 94. What then happened? A. My hawser parted. \*

169 Q. 95. What did you do then? A. Hauled the hawser in, backed up to the vessel and gave him my hawser back.

Q. 96. In that time while you were backing up and giving her your hawser over again what had become of the Sailor Boy? A. She was drifting close to the Island.

Q. 97. Was she on the Island? A. No, sir; not on the Island, but close to it.

Q. 98. After giving her your hawser the second time what did you do then? A. Towed her off, towed her over the bar.

Q. 99. How long did it take you to get her over the bar? A. Three-quarters of an hour.

Q. 100. About what time did you get her to the inside bar? A. Three o'clock.

Q. 101. There you left her? A. There I left her.

Q. 102. Why? A. There was not water enough to tow her over.

Q. 103. What was the character of the bottom at Dead Mans Island? A. Rock.

Q. 104. To have let her go on Dead Mans Island would have simply pounded her to pieces, I suppose? A. Yes, sir.

Q. 105. As a matter of fact she never was on Dead Mans Island, was she? A. No, sir; she was not on the Island. Close to the Island.

Q. 106. In your judgment, what was the cause of that accident? A. A false statement of the draft of the vessel.

170 Q. 107. At what time did high water make on the bar that day? \* A. At 2 o'clock and 21 minutes, high water.

Q. 108. Is there a difference in high water at San Diego

and Wilmington? A. Yes, sir; 12 minutes. At San Diego it was high water that day at 2 o'clock and 9 minutes.

Q. 109. Adding 12 minutes later time for Wilmington made 2:21? A. 2:21.

Q. 110. In towing the vessel, the Sailor Boy, over the bar, what course did you pursue with reference to its being a usual or unusual course? A. The usual course I always tow all the vessels.

Q. 111. Was there any precaution which you might have taken to avoid striking there? A. No, sir.

Q. 112. After the vessel got up to the wharf - when did she get up to the wharf? A. I took her up at 3 o'clock the next morning.

Q. 113. That is, you left her at 3 o'clock in the afternoon, and then at 3 the next morning you took her to the wharf? A. Yes, sir; took her to the wharf.

Q. 114. Over inside the bar? A. Yes, sir.

Q. 115. After that did you make any inspection of the vessel to ascertain what draft she was drawing? A. Yes, sir.

Q. 116. What did you do? A. The next day I went there to sound. Then she was aground. I could not get any soundings. I had to wait to get the mark of the vessel.

Q. 117. That is to say, her marks on her stern post? A. Yes, sir. \*

171 Q. 118. When did you get those marks, the same day? A. No, the next day.

Q. 119. After she was discharged or partly discharged? A. Partly discharged.

Q. 120. Anybody with you? A. Yes, sir; a carpenter.

Q. 121. Did you make any computation or any measurements? A. Yes, sir; I found she was marked about 13 feet. I sounded her marks, measured the marks and found them correct. After that I sounded from the 13-foot mark up by the draft the Captain gave me.

Q. 122. What do you mean by saying to the draft the Captain gave you? A. He said his vessel when she was loaded the rudder-head was 2 inches out of the water.

Q. 123. When did he tell you this? A. The same day she struck, coming over the inside bar to the wharf.

Q. 124. Now then, you sounded or measured from the 13-foot mark up to 2 inches from the rudder-head? A. From the rudder-head.

Q. 125. The upper end of the rudder? A. Yes, sir.

Q. 126. What did you find that distance? A. 15 feet and  $\frac{1}{2}$  inch.

Q. 127. Not 15 feet  $\frac{1}{2}$  inch from the 13-foot mark? A. No, the full measurement.

Q. 128. 2 feet and a half-inch from the 13-foot mark to a place 2 inches from the rudder-head? A. Yes, sir.

Q. 129. That would make her entire draft, assuming she had a \* straight keel 15 feet and  $\frac{1}{2}$  inch? A. 15 feet and  $\frac{1}{2}$  inch.

172 Q. 130. Assuming that the Captain's statement was correct to you that when loaded she drew up to that point? A.

Yes, sir

Q. 131. Did the carpenter make measurements with you? A. Yes, sir; the carpenter made measurements.

Q. 131. Were any other measurements made? A. By the water line of the vessel when she was loaded, a black streak right along, I found the draft to be 15 feet 1 inch.

Q. 132. How was she painted? A. White.

Q. 133. There was a line indicating what? A. The water line.

Q. 134. Indicating what her immersion was in the water? A. Her immersion in the water. From the oil and stuff.

Q. 135. The oil? You mean to say that the dirty water of the Bay left a streak on her? A. Yes, sir.

Q. 136. You measured that and found that it was a half-inch higher than the Captain had told you? A. Yes, sir; than the Captain told me. A half inch more.

Q. 137. (By Mr. ACH.) 15 feet and an inch then? A. 15 feet and an inch.

Q. 138. (By Mr. PAGE.) Did you have any conversation with the Master of the Sailor Boy? A. Yes, sir.

Q. 139. What did he have to say on the subject? A. I told him I had been down sounding his vessel. He told me: "I see you have." He said: "What did you find her to draw?" I told him 15 feet 1 inch. He stood considering for \* five minutes and he  
173 told me he would speak to me perhaps again. That is all the conversation I did have after that.

Q. 140. How many tugboats are there that ply over those bars, tow over those bars in Wilmington? A. Three.

Q. 141. All owned by the same Company? A. Yes, sir.

Q. 142. How many vessels were there outside on that day when you went out to bring in the Reporter? A. There were 8 or 9 big ships laying outside.

Q. 143. They don't come in over the bar? A. No.

Q. 144. How many vessels were waiting to come over the bar? A. Only these two, the Reporter and the Sailor Boy.

Q. 145. If there had been in your judgment not sufficient water to bring over the Sailor Boy what would you have done? A. Left her out there until the next day.

Q. 146. What would you have done if the tide had been ebb at the time instead of flowing, as you say? A. I would have left her out.

Q. 147. You spoke of having taken the Reporter in first. Where did you leave the Reporter, at her wharf? A. No, sir; left her in the channel coming in about 400 feet from the wharf, from the end of the railroad wharf.

Q. 148. How far from the wharf that the Reporter was going to? A. About 17 or 18 hundred feet further up from the railroad wharf.

Q. 149. Did he drop his anchor there? What did he do? A. I don't know; I couldn't tell. I was outside at that time.

Q. 150. I asked you at the time you dropped him what did he do? A. He went ahead—let her go ahead with the headway\*  
174 I gave her right up to the wharf.

Q. 151. A distance of about 1700 feet? A. About 2500 feet from the time I left him up.

Q. 152. If the tide had been ebb at that time could he have done that? A. No, sir; I would have towed him up to the wharf.

Q. 153. After you dropped him he drifted with the tide for about 2500 feet, somewhere about there? A. Yes, sir.

Q. 154. To the wharf, under the headway you gave him when you dropped astern? A. Yes, sir.

Q. 155. You are expecting to go away from California, are you not? A. Yes, sir.

Q. 156. How long will you be gone, forever? A. No; about a year—possibly a little longer.

Q. 157. I will ask you one other question. What cause was there for the injury to the Sailor Boy? A. I don't know of any cause of it only the Sailor Boy must have drawed more water than what the Captain said. By the soundings I found there was plenty of water.

Q. 158. On the draft he gave me? A. On the draft he gave me. I never made a mistake with a vessel yet before that one, and I have towed vessels in night and day.

Q. 159. You made your soundings? Was that a regular thing with you as you went? A. Yes, sir; for deep draft vessels I sound all the time.

175 *Cross Examination of John Peter Melburg.*

Q. 1. (By Mr. ACH)—Are you in the employ of the owners of the Warrior now? A. No, sir; I am not.

Q. 2. When did you leave their employ? A. I think 8 days ago.

Q. 3. You resigned then, did you? A. Yes, sir.

Q. 4. For the purpose of going away? A. Yes, sir.

Q. 5. You expect to come back to California? A. I do in the course of time.

Q. 6. Expect to go into the employ of the owners again? A. Not that I know of.

Q. 7. Had the Sailor Boy ever been down in that harbor before? A. No, sir.

Q. 8. That was the first time that you met her, was it? A. Yes, sir.

Q. 9. Had you been out over the bar on the 5th day of January, before you towed the Reporter in? A. Yes, sir.

Q. 10. When? A. In the morning. About 8 o'clock in the morning.

Q. 11. About 8 o'clock in the morning you left San Pedro? A. Yes, sir.

Q. 12. What is the distance from your wharf at San Pedro to the outer bar? A. About a mile and a quarter.

Q. 13. About a mile and a quarter to the outer bar? A. To the outer bar.\*

176 Q. 14. How long does it take you generally to go out from your wharf to the outer bar, out and over the outer bar? A. Out and over? To the ship you mean? Over the bar?

Q. 15. Yes. A. About 10 or 15 minutes.

Q. 16. What time did you go in in the morning on the morning of the 5th of January? You went out in the morning, I understand you to say? A. Yes, sir.

Q. 17. How long did you stay out there? A. About half an hour.

Q. 18. And then went back? A. Went back.

Q. 19. That was the only trip you made out in the morning? A. The only trip I made out in the morning.

Q. 20. The Reporter was not there then was she? A. No, sir.

Q. 20. Then you tied up did you? A. Yes, sir.

Q. 21. And let your steam go down? A. No.

Q. 22. Kept up steam? A. Kept up steam.

Q. 23. Did you take your dinner aboard the tug that day? A. No, sir; I took it ashore.

Q. 24. What time did you take dinner? A. Took our dinner at half past 11 that day, so as to go out and tow vessels.

Q. 25. Took dinner at half past 11 that day? A. Yes, sir; that is the way I have to do on that tide to get vessels in on high water.

Q. 26. What time did you finish eating dinner on that day? A. I left the wharf at half past 12.

Q. 27. How do you know? A. I set the time. That is the time I told them to get dinner.\*

177 Q. 28. How do you know it was half past 12 when you left the wharf that day? A. Looked at my time. The engineer had his time right there.

Q. 29. You remember that now do you? A. Yes, sir.

Q. 30. Did you make any memorandum of it at the time? A. No, sir; I did not.

Q. 31. All that you have testified to, all you have stated in your answers to questions by Mr. Page has been from your memory. A. From my memory.

Q. 32. You made no note at all of it? A. No, sir.

Q. 33. Of anything concerning the transaction? A. No, sir.

Q. 34. Who was aboard the tug that day when you went out at half past 12? A. The captain of the Reporter.

Q. 35. Who else? A. My crew.

Q. 36. Do you know the names of your crew? A. My engineer. Yes, I do.

Q. 37. Is the same engineer on the tug now? A. The same engineer is on the tug now.

Q. 38. What is his name? A. Monroe.

Q. 39. How many deck hands did you have? A. Three.

Q. 40. Are they on the tug now? A. No, sir.

Q. 41. Do you know their names? A. Yes, sir.

Q. 42. Please give them? A. One is on the boat now. His name is Chas. Lunstrom. He is mate.

Q. 43. What were the others? A. The other one was Schmidt.

Q. 44. That is his other name? A. I don't remember.

Q. 45. Is he in San Pedro now? A. Yes, sir.\*

178 Q. 45. What is he doing there? A. Running on one of the tugs.

Q. 46. Who is the other man? A. The other man is Harry Haulon.

Q. 47. Where is he? A. In San Pedro.

Q. 48. Running on one of the tugs? A. No, sir; working ashore.

Q. 49. What time did the tide commence to flood that day or flow? A. To flow?

Q. 50. Yes, sir. A. Well, I can't exactly recollect that. Have you got a tide table?

Q. 51. I just want your memory.

MR. PAGE—You don't recollect when it commenced to flow? A. Well, 6 hours running in and 6 hours running out.

MR. ACH—Yes, I am aware of that.

Q. 52. What time did the tide commence to flow that day? Do you know without stopping to figure now? Just answer that question please. Do you know now without stopping to figure? A. Yes, sir. I guess I do.

Q. 53. What time? A. About six in the morning.

Q. 54. You remember that as a fact do you, that the tide commenced to flow about 6 in the morning of that day? A. I cannot exactly to the minute.

Q. 55. But about 6 o'clock in the morning. You remember that? Remember that the tide did commence to flow at that time, at about that time?

MR. PAGE Mr. Ach wants to know whether you remember\*  
179 the fact that it did commence or whether you are answering what you think must have been the case. That is what he wants to get at. Was there anything at the moment that called your attention that you now remember?

MR. ACH—Q. The thing I want to get at is this: Do you remember that the tide on that day in the morning commenced to flow at about 6 o'clock? A. No. It commenced to flow at about 8 o'clock in the morning.

Q. 56. What did you mean by saying 6 o'clock a minute ago? A. I made a mistake.

Q. 57. You made a little mistake by deducting 6 hours from two didn't you? That is the way you did it didn't you? A. At 8 o'clock in the morning the tide started to run in. I got a little excited. That is all.

Q. 58. How far was the Reporter from the outside bar when you went out to tow her in? A. About the same distance as the Sailor Boy.

Q. 59. How far is that? A. About a mile and a quarter.

Q. 60. How long did it take you to go out from your wharf to the Reporter on that day? A. About 15 minutes.

Q. 61. About 15 minutes to go out? A. Yes, sir.

Q. 62. Did you take any soundings on your way out when you went out to bring the Reporter in? A. No, sir; I did not.

Q. 63. How long did it take you to take hold of the Reporter? A. About 20 minutes at the highest.

Q. 64. How long did it take you after you took hold of the Reporter to tow her to the place that you let go? A. About 15 minutes. About half the distance from the wharf.

Q. 65. Then it took you no longer to take the Reporter in to the place that you let go of her than it did for you to go out to the ship without any tow at all? A. No, sir; it didn't. It was about half the distance towing.

Q. 66. How large a schooner is the Reporter? A. About 250,000.

MR. PAGE—Q. 67. That is she would carry 250,000 feet of lumber? A. Yes, sir; I would judge 250 to 300 thousand.

Q. MR. ACH—Q. 68. Then when you went out you took your soundings on the bar? A. Yes, sir.

Q. 69. Did you go out immediately upon dropping the Reporter? A. Yes, sir.

Q. 70. How long did it take you to go out to the Sailor Boy after you left the Reporter? A. Well, I sounded the bar.

Q. 71. That took some time? A. That took some time. Then going out and getting hold of the Sailor Boy.

Q. 72. No, no. After leaving the Reporter to the Sailor Boy. How long did it take you to go out and do all the sounding? A. I couldn't tell you exactly.

Q. 73. Three quarters of an hour? A. No. Not that.

Q. 74. About 40 minutes? A. About 40 minutes.\*

181 Q. 75. 40 minutes it took you to do that. How long did it take you to take hold of the Sailor Boy? A. About 3 or 4 minutes at the highest.

Q. 76. Only took you 3 or 4 minutes to pass your hawser over to the Sailor Boy? A. No.

Q. 77. Didn't you have some conversation with the master of the Sailor Boy as to whether or not he would take your hawser or whether you would take his before taking hold? A. No. He asked me to give him the hawser before the time he was down and told me to tow him in.

Q. 78. It took you 3 or 4 minutes to take hold of it? A. That is all.

Q. 79. After you took hold of him how long did it take you to tow him over the outer by? A. To the outer bar you mean, sir?

Q. 80. It don't make any difference. To the outer bar? A. About ten or fifteen minutes at the highest. Ten minutes at the highest.

Q. 81. How long were you with him until your hawser parted after you towed him to the outer bar? A. After I towed him in to the outer bar?

Q. 82. Yes.

Q. 83. 20 minutes before your hawser parted? A. 20 minutes before my hawser parted.

Q. 84. When was it you had the conversation with the master of the Sailor Boy? Was is on your way out to get the Reporter? A. No. At the time I was taking hold of the Reporter.

182 Q. 85. At the time you was taking hold of the Reporter? A. Yes, sir; to tow her in.

Q. 86. You then had a conversation with him? A. Yes, sir.

Q. 86. What was the conversation? A. He came alongside and asked me if I would tow him in. I asked him how much water he drew. He told me  $14\frac{1}{2}$ . I told him to be short as he could and I would come out and tow him in.

Q. 87. Did you have any conversation then about a hawser? A. He asked me if I would let him have his hawser.

Q. 88. He asked you whether you would let him have your hawser? A. Yes, sir.

Q. 89. Did he say anything about having a hawser himself? A. He said he had a 6-inch hawser but would not trust it.

Q. 90. Didn't he say anything to you about how much you would charge for your hawser? A. No, sir.

Q. 91. Nothing of that kind said at all? A. Nothing of that kind.

Q. 92. Didn't he say to you he had a new 6-inch hawser? A. Yes, sir.

Q. 93. And didn't you say that was not good enough he had better take your hawser. A. Yes.

Q. 94. Didn't he ask you how much you would charge for that and didn't you tell him ten dollars? A. Oh, no. I never did. He never asked me about the price at all.

Q. 96. What is the distance between the outside edge of the inner bar and the inside edge of the outer bar? A. The distance from the outside edge of the outer bar to the inside edge of the outer bar?\*

183 Q. 97. What is the distance as traveled by your tug in towing in vessels between the inner edge of the outer bar and the outer edge of the inner bar? Do you understand? A. Yes, sir.

MR. PAGE—What is the distance of deep water between the two bars?

MR. ACH—As traveled by the tug? A. About 250 or 300 feet from the inside edge of the outer bar to the outside edge of the inner bar.

Q. 98. And the distance over the outer bar is how much? A. 35 feet at the highest.

Q. 99. You were coming, of course, under slow bell? A. Slow bell; yes. Always come under slow bell over the bar.

Q. 100. There is always more water on the outer bar at San Pedro than there is on the inner bar? A. Yes, sir.

Q. 101. There is always plenty of water, is there not, in the channel between the outer and the inner bar? A. Plenty of water; 17 or 18 feet of water between the two bars.

Q. 102. Now, when you were towing the Sailor Boy in and she stuck on the outer bar was it immediately upon getting on to the bar? A. Immediately.

Q. 103. It was not when she got half way over or anything like that? It was immediately upon striking the bar? A. Immediately. Right on the edge of the bar.

Q. 104. Of course she was drawing less water at the bow than she was aft, was she not? A. I suppose so.\*

184 Q. 105. When the captain told you that she was drawing 14½ feet of water you understood that to be the stern? A. Certainly.

Q. 106. She struck very gently? A. Very gently.

Q. 107. You felt it? A. I felt it.

Q. 108. You knew it at that time? A. I knew it right away as soon as she struck. I could see that on the hawser.

Q. 109. Now, in going out, then, after you went out, after you took these soundings on your way out, the tide was still flowing? A. Yes, sir.

Q. 110. So there must have been more water on that outer bar when you came in than when you went out? A. Not in that time, might have been more, one or two inches.

Q. 111. One or two inches? There was more? A. Yes, more.

Q. 112. One or two inches more. In going out, if I understand you right, in sounding this outer bar you found on your first sounding that there was 16 feet 8 inches? A. Yes, sir.

Q. 113. On your second sounding 16 feet 6 inches? A. Yes, sir.

Q. 114. Then you found there was 16 feet 4 inches? A. Yes, sir.

Q. 115. Then on the fourth sounding you found 17 feet of water? A. Yes, sir.

Q. 116. Then you say that when you took these soundings the day after of the vessel she was drawing 15 feet and one inch\* 185 according to the water line as you termed it? A. Yes, sir.

Q. 117. Do you know whether or not she had taken in any water in the meantime? A. Water?

Q. 118. Yes. You don't know? A. I don't know.

Q. 119. You don't know whether she had taken in an ounce of water or tons of water, do you? A. I know there was men pumping there all the time.

Q. 120. You knew there were men pumping there all the time? A. Yes, sir.

Q. 121. Now, Captain, if this vessel struck on the outer bar at the bow and you knew when you went out there was 16½ feet nearly of water at the place she struck—she struck on the bow? A. On the bow. I cannot tell if she struck on the bow or the middle, or where. I know she struck on the first edge of the bar.

Q. 122. Why didn't you order that captain to anchor his schooner in the channel where there was plenty of water for him to wait until there was sufficient water to go over the inner bar? A. There was not room enough for the vessel to slew.

Q. 123. Wasn't room enough for the vessel to slew? A. No, sir.

Q. 124. Is not the fact that you say that she was drawing 15 feet one inch of water taken into consideration with the fact that there was over 16 feet of water on that outer bar when you towed her in a little strange that he would touch bottom she only drawing 15 feet?

A. I don't know anything about that.\*

186 Q. 125. You don't know anything about that? A. No.

Q. 126. Isn't it a fact that in order to touch, generally, where

there is 16 feet and  $\frac{1}{2}$  of water she must be drawing 15 feet 9 or 16 feet of water in the absence of a storm? A. Yes, sir.

Q. 127. There was no storm that day was there? A. No west wind nor storm.

Q. 128. No very heavy swells or anything of that kind. A. No, sir.

Q. 129. (By Mr. PAGE)—Was there any swell? A. A little; about half a foot swell.

Q. 130. (By Mr. ACH)—There was not any more than that? A. No more.

Q. 131. Now, before your hawser parted she only touched once, didn't she, on that outside bar? A. Touched 4 or 5 times.

Q. 132. 4 or 5 times—dragged her across? A. Dragged her across.

Q. 133. Before you went on towing her? A. Yes, sir.

Q. 134. You towed her toward the inner bar after that, didn't you? A. Yes, sir.

Q. 135. Was going to tow her right on over the inner bar? A. Yes, sir.

Q. 136. If your hawser hadn't parted? A. But my hawser parted on the outside bar towing her over.

Q. 137. Your hawser parted while she was on the bar? A. On the outside bar.\*

187 Q. 138. Then your hawser parted in over 16 feet of water? A. Yes, sir.

Q. 139. Have you towed the schooner, the Sailor Boy, in since that? A. No, sir; she has never been down there since then.

Q. 140. She has never been there since then? A. No, sir; never before or after. She never was there before, either.

Q. 141. How much water was the Reporter drawing when you towed her in that day? A. 13 feet, 11 or fourteen feet the captain told me.

Q. 142. The captain told you what? A. 13 feet, 11 or 14 feet at the highest.

Q. 143. That is what the captain told you? A. Yes, sir.

Q. 144. She was laden with lumber? A. Yes, sir.

Q. 145. Was she a larger or a smaller vessel than the Sailor Boy? A. A smaller vessel than the Sailor Boy.

Q. 146. Isn't it a fact that in towing the Reporter over on that day she touched bottom, too? A. No, sir.

Q. 147. Are you positive of that? A. I am positive of that.

Q. 148. Could the Reporter have touched and you not know it? A. No, sir. I can see as soon as the vessel just touches on the hawser, if she touched or not. I watch close every time I go over those bars towing a vessel.

Q. 149. The hawser parted, then, I understand you, while the Sailor Boy was on the bar? A. On the bar; yes, sir.\*

188 Q. 150. You went right back and gave her the hawser again? A. Hauled my hawser in, backed up and gave him the hawser back.

Q. 151. What was the reason that your hawser caught it? A. I don't know, sir. The heavy pull. That is all.

Q. 152. Where did it part? A. Close to the vessel's hawse pipe.

Q. 153. That is the Sailor Boy? A. The Sailor Boy.

Q. 154. Did she drift any after the hawser broke? A. Yes, sir.

Q. 155. Which way? A. Towards the Island.

Q. 156. Then the schooner after your hawser parted drifted off? A. She drifted right in towards the Island.

Q. 157. Drifted out of the channel? A. Drifted out of the channel in close to that Island. When I got the hawser on her she was right close. I towed her off and kept into that bar there.

Q. 158. Do you know whether she thumped on the Island or not under all the circumstances? A. No; she never thumped at all. She was rolling.

Q. 159. Rolling on the bar? A. Rolling on the bottom? Yes, sir.

Q. 160. After you took hold of her again—do you know what time it was when your hawser parted? A. No, sir; I don't recollect what time. I didn't look.

Q. 161. Do you know what time it was when you started to take her up, to take hold again after the hawser parted? A. After the hawser parted. No, sir; I don't.\*

189. Q. 162. About how long a time intervened between the time the hawser parted and the time you took hold of her again? A. From the time the hawser parted until I gave him the hawser back, I should judge, about a quarter of an hour.

Q. 163. What occasioned that delay? A. Well, I had to haul the hawser in so I could back up to the vessel to give him the hawser back.

Q. 164. She didn't drift away from you in the meantime? A. Well, at the time the hawser parted I had headway. My boat went ahead.

Q. 165. Didn't you immediately stop and reverse? A. I immediately stopped her and reversed. But I could not reverse before I got the hawser in.

Q. 166. You stopped? A. I stopped.

Q. 167. How far away did you drift before you got the hawser in? It didn't take you long to get in 35 feet of hawser? A. 35 fathoms of hawser. Well, it is considerable for 3 men.

Q. 168. How long did it take you to get that in? A. Say about 5 minutes.

Q. 169. Then the other ten minutes was taken up in backing up and giving her your hawser? A. Giving her the hawser.

Q. 170. It was not any more difficult to give her your hawser inside than it was before when you were outside, was it? A. Yes; I should say so.

Q. 171. Why? A. Outside I came right along going up along the vessel's side and gave him the hawser. Here I had to back up. If I didn't make it I have to go ahead and swing the boat around and back up again.

Q. 172. As a matter of fact didn't you succeed in giving her the hawser the first time you tried after the hawser parted? A. No.

Q. 173. All this time the tide was still flowing? A. Still flowing.

Q. 174. You got her again then. A. Yes, sir.

Q. 175. Before half past one o'clock that day after your hawser parted you got her again? Before half-past one o'clock of that day? A. I couldn't tell that, what time that was when I gave him the hawser the second time.

Q. 176. You did not lose more than 15 minutes, I understand you? A. 15 minutes at the highest.

Q. 177. It didn't take you more than 15 minutes to tow her in until the hawser parted? Fifteen minutes from the time I took hold of her until the hawser parted?

Q. 178. Yes? A. Oh, yes. I never said 15 minutes from the time I took the vessel until the hawser parted.

Q. 179. How long a time did it consume? A. I think about 25 or 30 minutes. I was towing on that vessel for about twenty minutes before the hawser parted, trying to get her over.

Q. 180. She was not grinding any there? That is a sandy bottom? This outer bar is but 35 feet in length? A. That  
191 is all, sir.

Q. 181. I understand you to say she simply touched gently? A. Touched gently first.

Q. 182. First. How did she touch the second time? A. Well, she was rolling after that. She was rolling.

Q. 183. That wouldn't take more than ten or fifteen minutes to tow her over 35 feet of water would it? A. It takes considerable time when a vessel is aground to pull the vessel over.

Q. 184. Was she aground? A. She was aground; yes, sir.

Q. 185. She was hard and fast aground was she? A. Well, I don't know if she was. Some of her keel came off the second touch she gave. A piece of her keel came off.

Q. 186. Well, then assuming that it was 25 minutes. I understand you to say you took hold of her about one o'clock? A. Yes, sir. About one when? Of the Sailor Boy?

Q. 187. Yes. A. No.

Q. 188. What time did you take hold of her? A. I said I got the Sailor Boy into the bar at 5 minutes past two.

Q. 189. Into the bar at 5 minutes past two? A. Five minutes past two.

Q. 190. At five minutes past two you got her into the bar? A. Into the bar where she struck.

Q. 191. Then, of course, the tide commenced to ebb after that, before you got hold of her again? A. Before I got hold of her again. \*

192 Q. 192. There is some little space in between the flow and the ebb tide isn't there? Some little time? A. Well.

Q. 193. Called slack water? A. Slack water, yes.

Q. 194. Why didn't you tow her in over the inside bar after you got hold of her? A. By the time I got over the outside bar there was not water enough to get over the inside bar?

Q. 195. How much had the tide ebbed? A. Well, might have been probably half an hour.

Q. 196. The tide might have ebbed half an hour? A. Yes, sir.

Q. 197. What is the name of the man who was taking the soundings when you came out? A. Chas. Lundstrom,

Q. 198. He is the man who is now the mate? A. Yes, sir.

Q. 199. Where was it that you measured the Sailor Boy and found the water line which indicated a depth of 15 one? A. At the wharf.

Q. 200. You towed her in the next day at 3 o'clock in the morning? A. Three o'clock in the morning. Yes.

Q. 201. Was that high tide? A. High tide. The tide was running out a little by that time?

Q. 202. Was the tide that night any higher than it was in the day? A. Yes, sir.

Q. 203. How much higher? A. About four inches higher. \*

193 Q. 204. Still it had been ebbing sometime before you took hold of her? A. Before I got to the wharf.

Q. 205. What time was it that you measured her? A. The next day.

Q. 206. What time? A. About noon.

Q. 207. This water line you speak of you say comes from the dirty water, oil, etc? A. Yes, sir.

Q. 208. They had then unladen the vessel some, hadn't they? A. Yes, sir.

Q. 209. Did they have all the cargo out of her? A. No, sir; only a part of her deck load.

Q. 210. In the few hours that she lay there, you claim that this dirty mark made by the water was occasioned or made upon her side? A. The water line, 3 or 4 places, just as the tide rose and fell. You could see the mark.

Q. 211. Where did you measure her? What part of the vessel? A. Her stern post.

Q. 212. Did you find this, what you call this dirty mark there? A. Yes, sir.

Q. 213. At her stern? A. At her stern.

Q. 214. Did you measure her at the bow? A. No; I didn't measure her at the bow.

Q. 215. You didn't measure any place except the stern? A. No place except at the stern.

Q. 216. That was after she had some of her cargo out? A. Yes, sir. \*

194 Q. 217. Did you go down into her? A. No; I never went into her.

Q. 218. They were pumping water at that time were they? A. I don't know that.

Q. 219. Did the captain tell you they had taken in a lot of water? A. No.

Q. 220. He didn't tell you so? A. No.

Q. 221. When was it you saw them pumping? A. That same day.

Q. 222. That same day they were at work pumping? A. He hired men to pump.

Q. 223. Did the Captain say anything to you about having kept men at the pumps? A. Yes, sir.

Q. 224. During the night? A. He told me he had men come aboard at nine o'clock that same night, come aboard that night and sleep, ready to work in the morning.

Q. 225. Did you tow anything else in that day? A. No, sir.

Q. 226. Tow anything out? A. No, sir.

Q. 227. What time was it that the Sailor Boy struck? A. Five minutes past two.

Q. 228. How do you know that? A. I looked at the time.

Q. 229. Looked at the time when she struck? A. Yes, sir.

Q. 229. What time was it? The first time that she struck, or the second, or the third? A. The first time she struck.\*  
195 Q. 230. The first time she struck you looked and it was 5 minutes past two? A. Five minutes after two.

Q. 231. Was you at the wheel? A. I was right alongside the wheel.

Q. 232. Where was the mate when he took these soundings? In the bow of the boat? A. Yes.

Q. 233. Where were you, at the wheel? A. No.

Q. 233. Who had charge of the wheel while these soundings were going on? A. One of my other men.

Q. 234. Which one of them, do you remember? A. Yes, sir; a mau named Schmidt.

Q. 235. Did you say that he called the soundings? A. He called the soundings—I saw the soundings at the same time.

Q. 236. Was he calling them for your benefit? A. Yes, sir.

Q. 237. If you were alongside, what was your object in calling them? A. So as to let me know what mark it was.

Q. 238. You were there looking at it? A. That don't make any difference.

Q. 239. Did any of these other men hear him call the soundings? A. All of them.

Q. 240. Have you talked with them? A. No.

Q. 241. How do you know they heard it? A. They was right there.

Q. 242. Do you know as a matter of fact that they did hear  
196 it, or simply think they did? \* A. I simply think they did.

Q. 243. You have not talked with them about it? A. No.

Q. 244. Have you talked with Lundstrom about it? A. Yes, sir.

Q. 245. When? A. About a month or so ago.

Q. 246. Did you tell him you were coming up here to give your deposition in this matter? A. No; I didn't know anything about it.

Q. 247. Didn't know that until you got here? A. No; I thought it was settled. I never heard anything of it before a couple of days ago.

Q. 248. When you state that the Captain made a false statement as to the draft of the vessel, you don't state that as a fact do you? A. I don't state that as a fact. No. But I—

Q. 249. You don't know, if it were true, that when the boat or the schooner was at the wharf drawing 15 feet and  $\frac{1}{2}$  inch or 15 feet and one inch, but that the additional draft over  $14\frac{1}{2}$  feet was caused by the amount of water she took in? You don't know anything about that, do you? A. I don't know if there was any water in her or not.

Q. 250. Therefore, in stating that the Captain had made a false statement, you simply didn't know anything about that, did you? A. Only I think I could see the draft.

Q. 251. If the vessel took in enough water to make that distance, that would be accounted for, and the Captain didn't make any false statement. That is true is it not? A. Yes; that is true. We had to find that out, if they took water or not. \*

197 Q. 252. You say that you account for the fact of her having struck by the fact that the Captain made a false statement of the amount that she was drawing, he having stated that she was drawing  $14\frac{1}{2}$  feet of water? A. He having stated that.

Q. 253. Now, let me ask you: You made those soundings on a flowing tide? A. Yes, sir.

Q. 254. And found that on the outside bar you had 16 ft. 8, 16 ft. 6 and 16 ft. 4 inches of water. A. Yes, sir.

Q. 255. 16 ft. 4 being at the shallowest place on the bar? A. Yes, sir.

Q. 256. And the tide was flowing? A. Yes, sir.

Q. 257. If the Captain of the schooner had told you that he was lying outside, and wanted to be towed in, and that he was drawing 15 feet one inch of water wouldn't you have towed him in? A. No, sir.

Q. 258. Why not? A. I didn't have the water on the inside bar.

Q. 259. Would you not have towed him into the channel if he desired to go into the channel between the inside and the outside bar? A. No, sir; I would not.

Q. 260. Why not? A. There was not room to leave the vessel there.

Q. 260. That would be the only reason you wouldn't take him in? It would be because there was not any room in the channel in between to leave the vessel over night? A. Certainly. \*

198 Q. 261. Didn't she as a matter of fact, stay there until 3 o'clock the next morning? A. She did, because we couldn't get her over. There was not water enough to tow her over by that time we got there.

Q. 262. She did stay there between the hours of three o'clock in the afternoon and 3 o'clock the next morning? A. Yes, sir.

Q. 263. That is true? A. That is true.

Q. 264. So there was room enough for her to lay there? A. Room enough to lay there, but she had no room to slew. She was there. Couldn't do any otherwise by the time we got her in there.

Q. 265. But she was there? A. Yes, sir.

Q. 266. So that the only reason that you would not have towed a vessel in that was drawing 15 feet one or two inches, was because you could not take her in over the inside bar? A. Yes, sir.

Q. 267. Now let us see about that. When you were going out and made these soundings you sounded the inside bar too? A. Yes, sir.

Q. 268. You found on the inside bar 15 ft. 9 and 15 feet 6? A. Yes, sir.

Q. 269. And a scant 15? A. Yes, sir.

Q. 270. And the tide was flowing? A. The tide was flowing.

Q. 271. You went out about one o'clock, didn't you? A. Yes, sir.

199. Q. 272. And the tide then had an hour? A. (Interrupting) I went out at half past 12.

Q. 273. I mean when you went out after the Sailor Boy, you went out at 1 o'clock? A. Oh, no; it was after one.

Q. 274. How long after one? A. Must have been about 20 minutes.

Q. 275. It couldn't have been as late as half past one? A. No; I don't think it was.

Q. 276. It took you fifteen minutes to get out to her? A. Yes, sir.

Q. 277. You made these soundings when you were going out? A. Made soundings going out.

Q. 278. In going out after the Sailor Boy? A. After the Sailor Boy.

Q. 279. That was a quarter after one? A. A quarter after one.

Q. 280. A quarter or 20 minutes after one. Then the tide had still one hour to run? A. Yes, sir.

Q. 281. One sixth of the time to run yet? A. Yes, sir.

Q. 282. You found that the shallowest place was scant 15 feet of water? A. Scant 15 on the inside.

Q. 283. With the tide fully one hour to run? A. Yes, sir.

Q. 284. Do you mean to testify now that if you had gone out there knowing that a vessel drew 15 feet one inch of water—You would consume in towing, there being no accident, would consume in towing between her anchorage ground on the outside\* and  
200 the outer bar, over the outer bar, and over the inner bar about 30 or 35 minutes wouldn't you? A. Yes.

Q. 285. Now would you not have taken a vessel in that was drawing 15 feet one inch of water, making allowance for the tide to cover an additional 3 or 4 inches? A. No, sir.

Q. 286. When you had an hour to run on that tide? A. No, sir; I would not. In one hour we only get  $1\frac{1}{2}$  inch.

Q. 287. In one hour's rise? A. Yes; that is all, the last hour the tide runs very slow.

Q. 288. It does not rise more than an inch or an inch and a half? A. An inch or an inch and a half in a small tide like that.

Q. 289. So that you would not have taken a vessel that was drawing 15 feet one inch over? A. I would not have taken the Sailor Boy in that day if I had known she drew 14 ft. 8.

Q. 290. What is the character of the botton on the inner bar? A. On the inner bar small rocks, cobblestones and sand.

Q. 291. At what point of the inner bar was it that you found a scant 15 feet of water? A. On the outside edge.

Q. 292. On the outside edge? A. On the outside edge of the inner bar.

Q. 293. What is the length of the inner bar? A. About the same distance as the outside, 35 to 40 feet.

Q. 294. You made three soundings in there?\* A. Three sounding in there.

201 Q. 295. At what distance apart did you make those soundings? A. Just as fast as a man could haul the pole up and stick it down.

Q. 296. For what distance was there only 15 feet of water on that bar? Did it cover a distance of two feet? A. About two feet.

Q. 297. About 2 feet there was only 15 feet of water? A. Yes; sounded twice and got two scant 15 feet.

Q. 298. Covering about 2 feet of water? A. Yes, sir.

Q. 299. You say the Captain of the Reporter told you he was drawing 13, 11 or 14? A. 13, 11 or 14 ft.

Q. 300. Did you look at the marks on the Reporter? A. No, sir; I did not.

Q. 301. I understand you to state positively he didn't tell you he was drawing 13 9? A. No, sir; he did not.

Q. 302. Do you know, as a matter of fact, what the Reporter was drawing? A. Only just what he said, 13 feet 11 or 14 feet at the highest.

Q. 303. Was there anybody else that measured the vessel besides yourself and this carpenter? A. No, sir; not that I know of.

Q. 304. What was the carpenter's name? A. I don't remember his name now.\*

202 Q. 305. Was he an employee of the owners of the Warrior? A. Yes, sir.

Q. 306. You didn't get anybody besides any employee of the owners to measure that vessel did you? A. Yes, sir. I measured that vessel twice. I measured her one Sunday at noon and I measured her Monday at noon.

Q. 307. Which day was it that the carpenter was with you? A. I don't recollect. I think it was Sunday.

Q. 308. What day of the week was the 5th of January? A. I don't remember.

Q. 309. On the day that you measured the vessel yourself first you were alone, were you? A. No; I had a man with me.

Q. 310. Who was it? A. A man by the name of Crittenden.

Q. 311. What did he do, do you know? A. He was a laboring man.

Q. 312. Was he in the employ of your owners? A. No.

Q. 313. What did he do? A. He was working around the wharf.

Q. 314. What did he do with regard to the measuring? A. He measured the vessel; he was a part of a carpenter, does carpenter work.

Q. 315. How did he measure it? A. Measured her with a rule.

Q. 316. With his rule? A. With a rule, yes, sir; and a square

Q. 317. You mean from the 13-foot mark? A. From the 13-foot mark up.

Q. 318 To some place that you indicated to him? A. To the place where the Captain gave us, the rudder head\* 2 inches above the water. By that time the water line was there and we  
203 measured that and found it correct.

Q. 320. What time was that A. That was about noon.

Q. 321. About noon of Saturday? A. Between 11 and 12 o'clock.

Q. 322. Between 11 and 12 o'clock Saturday? A. Yes, sir.

Q. 323. (By Mr. PAGE)—Saturday or Sunday? A. Saturday.

Q. 324. (By Mr. ACH)—She had been in the harbor at the dock from 3 o'clock in the morning had she, about 8 hours? A. No; that was the day after that.

Q. 325. You didn't measure her the day she came in? A. No, sir; I couldn't do it.

Q. 326. Did not they immediately upon arriving at the dock commence to take the cargo ashore? A. No, sir.

Q. 327. When did they commence? A. About 3 or 4 o'clock in the afternoon of that next day.

Q. 328. Of the day that she was towed in? A. Yes, sir.

Q. 329. How much of the cargo did they have out at that time when you measured her? A. I don't know. There was some on the dock at the time.

Q. 330. Was there only one water-mark on the vessel? A. No, 3 or 4.

Q. 331. Were they of different heights? A. Different heights. Just as the vessel lightened up the marks got down.

Q. 332. How long have you been in the employ of the owners of\* the Warrior? A. About 9 years.

204 Q. 333. In their employ as master of a tug? A. No, sir.

Q. 334. In their employ in that line though? A. In that line.

Q. 335. How long have you lived at San Pedro? A. 14 years in San Pedro and Wilmington.

Q. 336. Do you know the character of the cargo that the Sailor Boy had? A. No.

Q. 337. Do you know how many tons she had on board? A. No, sir.

Q. 338. Measurement or otherwise? A. No, sir.

Q. 339. Do you know how many tons, how much cargo, she had compared with the Reporter on that trip? A. No, sir; I don't.

Q. 340. In towing over those bars what is the greatest amount of draft that you ever towed over? A. 16 feet 2 was the highest.

Q. 341. When was that? A. That is last year at the spring-tide.

Q. 342. Last year in the springtide? A. Yes, sir.

Q. 343. What is the ordinary draft of vessels that go over there? A. 15  $\frac{1}{2}$ .

Q. 344. You tow vessels of that kind and character in and out all the time? A. Yes, sir. With a middling sized tide.

*Redirect Examination of J. P. Melburg.*

By MR. PAGE. What is the speed of the Warrior? A. 11 knots.\*

205 Q. 2. Will you be good enough to take this map marked respondent's exhibit 1, and trace on it in red ink as nearly as you can the course that was taken by the Sailor Boy from the roadstead up to the place she was finally left?

(The witness traces the course on respondent's exhibit 1.)

Q. 3. Have you traced the course of the Sailor Boy on this map marked respondent's exhibit 1? A. Yes, sir.

Q. 3. Is that the usual course followed by vessels? A. That is the usual course.

Q. 4. When they are being towed in? A. Yes, sir.

Q. 5. That is the course as laid down in red ink on this map exhibit No. 1? A. Yes, sir.

Q. 6. It shows the course of the Sailor Boy from the time that she was taken hold of until she struck on the outer edge of the bar? A. The outer edge of the outer bar.

Q. 7. Then the rest of it simply traces the channel that all vessels follow? A. Yes, sir.

Q. 8. Will you please mark with a couple of parallel lines in red ink the width of the bar? A. I have made cross lines which show the bar as it is crossed.

Q. 8. I will ask you the question again as to how the vessel struck, what part of the Sailor Boy struck when she struck on the outer bar? A. As near as I can judge the center of the vessel struck.

Q. 9. What makes you think that? A. That is where the show or some piece of wood came up from the keel, I understand, I have heard from the men\*—

206 MR. ACH (interrupting) You need not state what you have heard.

MR. PAGE. No.

Q. 10. Judging from the character of certain pieces of wood belonging to her keel that came up after she struck you believe, it is simply your opinion, that it was a part of the keel in the middle of the vessel? A. Yes, sir.

[Endorsed:] Filed, August 24, 1891.

SOUTHARD HOFFMAN, *Clerk.*

By J. S. MANLEY, *Deputy Clerk.\**

WILLIAM BARCE, called for the claimant. Sworn.

207 MR. PAGE—Q. What position do you occupy now? A. I am now foreman of the United States Government; I am doing the work down there.

Q. Where do you live? A. In San Pedro.

Q. You are foreman in what class of work in San San Pedro? A. I am foreman of the United States work, and have been for twenty years.

Q. Is that connected with the clearing out of the bar at San Pedro. A. Inside and outside, 600 feet outside of the Island.

Q. What Island? A. Deadman's Island.

Q. Your position there is where? A. On the derrick lighter on the outside of the Island with fourteen of my men I have employed there.

Q. Is it not a part of your business to be on the wharves or jetties? A. Yes, sir; I am supposed to be there all the time.

Q. How are these wharves placed with reference to where the bar is? A. We are at the present time within three hundred feet of the outer bar.

Q. Is it your duty to make any report of any kind with reference to what is going on? A. Yes, sir; I have to report when I am there all alone. We have only an engineer and he is in charge of the work.\*

208 Q. When you are left alone you report anything of interest in your work? A. Yes, sir.

Q. When the United States Engineer is there you report to him? A. I report to him.

Q. When you are left alone to whom do you report? A. I report to 530 Kearny street in this city, to Colonel Benyard.

Q. On the 5th day of January, 1888, do you recollect the fact that the "Sailor Boy" struck on the bar? A. I do.

Q. Where were you on that day? A. I was down on Range 15, and I crossed the Range to the Channel Range.

Q. Is that on the wall? A. That is on the west wall.

Q. How far about were you from the spot where the "Sailor Boy" struck? A. Well, it is on an angle, and I should judge to the best of my ability it was between four and five hundred feet.

Q. Four or five hundred feet? A. Yes, sir.

Q. Did you notice at what time of day the "Sailor Boy" struck? A. The time I put down was 2:10; that was in the afternoon.

Q. Ten minutes past two in the afternoon? A. Yes, sir.

Q. You say you put it down? A. I did.

Q. Where did you put it down? A. I put it down in my book that I carry along with me all the time.\*

Q. Did you notice on that day, what the condition of the bar was at that time? Did you notice whether it was rough or\*  
209 ordinary weather? A. The bar was very smooth, about as smooth as I ever saw, or I wouldn't have been there.

Q. How was the wind, heavy or light? A. The wind was southwest and light.

Q. How long did you say you had been working on that bar? A. I have been working on that bar ever since 1871; I began on April 28th.

Q. Suppose it had been heavy weather on that bar, that is to say it had been rough, a rough sea, what effect would there have been on your position? A. I wouldn't have been on the wall; I would have been overboard; I could not stay there.

*Cross-Examination.*

MR. MCGRAW—Q. After you got breakfast that morning what did you do the first thing? A. When I got my breakfast I went over to work.

Q. What did you do that morning? A. In the morning I went over to the breakwater.

Q. Whereabouts? A. The wall; I don't go on the wall, I go over on the ship there.

Q. What were you doing there then? A. I wasn't doing anything then.

Q. There was no work going on then? A. Yes, sir.

Q. Were there any men employed there then? A. Yes, sir.

Q. How many? A. I think at that time there was—I haven't any memoranda of the men; I couldn't tell you exactly, but  
210 I\* think it was about eight.

Q. If there were any men employed that day, who paid them? A. The United States Government paid all the men.

Q. Who sent in the accounts? A. I did.

Q. Whom did you send them to? A. I kept them in a time-book.

Q. Whom did you send the accounts to? A. I sent them to the engineer in charge.

Q. What is his name? A. The engineer in charge of the work at that time was Colonel J. C. Mendell.

Q. Then, if there were any men employed at that time their accounts would be in Colonel Mendell's office? A. Yes, sir; I presume so, everything would be there; I can't tell, it is so long ago, it is 1888.

Q. When men were employed there and the weather was too rough to work, did their accounts go on the same? A. Yes, sir; they were hired by the month.

Q. Did you notify Colonel Mendell what days they could work and what days they could not work? A. No, sir.

Q. Your reports would not show whether they worked any particular day or not? A. They are supposed to work all the time.

Q. You say you couldn't work on the wall when it was rough weather? A. We have work for all the men all the time inside, when it is rough, all they can do.

Q. The men have not been employed continuously for the  
211 last\* three or four years? A. They haven't done much in the last three or four years. Since July, 1888, we have had fifteen or twenty men working, 1887 and 1888.

Q. Do you stop for lunch or dinner? A. Yes, sir, of course; the men have to eat.

Q. What time do they stop work? A. Whenever the tide comes right. I keep my men to work until the tide comes off right.

Q. What time did the men stop work that day? A. I couldn't tell you five or six years ago, when the men stopped work. It is all owing to the barges coming out and schooners coming in, and depends upon the tide.

Q. When is it they stop work, at high tide or low tide? A. Sometimes high tide, sometimes low tide, and then it is according to the barges.

Q. Do they have a regular hour for dinner? A. No, sir.

Q. Where do they get their dinners? A. The United States

Government has a little house over on the rocks kept on purpose for the men.

Q. How long had you been on the end of that bar before the "Sailor Boy" struck? A. About half an hour or an hour.

Q. How did you get there? A. In a boat.

Q. Where from? A. From San Pedro.\*

212 Q. Did anybody row you or did you row yourself? A. No, sir; I just pulled myself over.

Q. Where is that book you have mentioned? A. I have it with me.

Q. When did you write the memorandum? A. On the wharf.

Q. When? A. When did I write it?

Q. Yes. A. On the 5th of January, 1888.

Q. Did you not write it July, 1890? A. Who?

Q. You. A. No, sir.

Q. You are quite sure of that? A. Yes, sir.

Q. Did you not write it in a saloon at San Pedro? A. Me?

Q. Yes. A. No, sir; I did not write it in no saloon.

Q. You are quite sure you did not write it in a saloon in San Pedro? A. That is what I am.

Q. Did you not write it in a saloon in San Pedro and say that at that time you were on the east wall? A. I did not do such a thing. I don't write my reports in such a way as that.

213 Q. Did you not write it in a saloon when you were drunk in San Pedro?\* A. I guess not. It is something I am not in the habit of doing.

Q. Are you quite sure about that? A. That is what I am.

Q. Were all these other memoranda written on the pages preceding and following this one written by you? A. They are written from time to time, as I have a memorandum book with me. You will find a good many things connected with the school in there.

Q. How does it happen that this memorandum written on January 5th, 1888, was written with a different lead pencil from any other lead pencil in that vicinity? A. You will find them all in that way.

MR. MCGRAW—I offer this in evidence, and wish to exhibit to the Court. It is a matter that does not need any expert testimony.

MR. PAGE—Have you examined every page?

MR. MCGRAW—I have, several pages.

Q. This is no use to you, is it? A. Yes, sir.

Q. It is use to you now? A. Yes, sir.

MR. MCGRAW—I would like this filed as an Exhibit until we get through with the case.

THE COURT—I do not see that I can take his book away from him.

MR. MCGRAW—Then I will have to put an expert on the stand then, as to the difference in the writing. That is the only way I can do.\*

214 MR. PAGE—The Court has seen it. It does not need an expert to tell whether one or two pencils have been used in the book.

MR. MCGRAW—When an appeal is taken from the decision to the Court above, the Court will not be able to see that book if it is in a witness's pocket.

MR. PAGE—He will probably admit it is written with two different pencils, if you ask him.

MR. MCGRAW—Q. When did you first speak to anyone of the fact that you saw the "Sailor Boy" strike? A. Speak to anybody?

Q. Yes. A. I never spoke to anyone.

Q. You never told anyone about it? A. No, sir.

Q. Never told anyone in the world? A. I don't say anything of that kind. I put it down.

Q. You never said anything to anyone? A. They asked me about it on the wharf weeks and weeks afterwards. They always asked me. I am always out there.

Q. Who did you first tell that you had seen the "Sailor Boy" strike? A. I don't know.

Q. Did you tell anyone? A. I don't remember.

Q. Did you ever say anything to anyone about it? A. No, sir; I don't remember that I ever did.

Q. How did you happen to come up here as a witness? A. Because I was subpoenaed to come.\*

215 Q. Who is the owner of the tug "Warrior"? A. I believe Captain Banning is.

Q. Did you ever talk with Captain Banning about this? A. No, sir.

Q. Never talked with him? A. I have had nothing to do with him.

Q. Never talked with any of his men? A. No, sir; never have anything to do with them anyhow.

Q. Never said a word to him, about having seen the "Sailor Boy?" A. All I had to do with him was, I went to buy coal of him.

Q. Never said a word to him about having seen the "Sailor Boy?" A. No, sir; nothing at all.

Q. Did you ever see Mr. Page before you came up here? A. Mr. who?

Q. This gentleman here? A. Never did in my life.

Q. Before you came up here? A. No, sir; I have not been up here for 8 or 9 years.

Q. Did any attorney of Captain Banning or anyone speak to you and ask you what you knew about this? A. No, sir.

Q. To whom did you show that book before you came up here? A. This book?

Q. Yes? A. I showed it to Mr. Halstead.

216 Q. Who is Mr. Halstead?\* A. He is in Court now.

Q. What is his business? A. That is all the name I know him by.

Q. What is his business? A. Agent there on the wharf.

Q. He is an agent of Mr. Banning? A. I believe he is.

Q. When did you show this to Mr. Halstead? A. I don't remember.

Q. How long ago was it? A. I think it was about two months.

Q. Two months ago? A. Yes, sir.

Q. That is the first you ever showed that book to anyone? A. Yes, sir.

Q. How long had that memorandum been written when you showed it to Mr. Halstead? A. In January, 1888.

Q. The January previous? A. January 5th, 1888.

Q. How did it happen that that memorandum was written with a different pencil from that used in other portions of the book? A. I don't know how, I will describe it to you. I wish I had brought up the vest I had on. I am keeping an automatic tide gauge down there, and they run with pencils. I have sometimes in my pocket dozens of them, all little short pieces\* and some long ones.

217 A man who is on the wall, and in a boat running around there, if you know anything about a boat, you will know enough to know he takes the first thing he can get hold of.

Q. How did it happen you got hold of a hard pencil to make this entry, while all the other entries are written with a soft pencil?

A. There are some things there entered in 1887 and 1888. A man cannot use one pencil in a year.

Q. How did you happen to show this memorandum book to Mr. Halstead? A. He asked me if I had one.

Q. He asked you if you had a memorandum book? A. Yes, sir.

Q. How did he come to ask you that? A. Most any one would ask me for anything of the kind, my being placed in the position that I was. They would suppose I would know more about it than any one.

Q. Where were you when Halstead asked to see your book? A. I cannot remember. I was, I suppose, on the wharf. I go down on the wharf every day. I believe I was on the wharf, I don't know.

Q. It was about two months ago? A. Somewheres about that.

Q. That is the first time that he asked you for it? A. Yes, sir.

Q. The first time you ever told any one what you had  
218 seen? \* A. Yes, sir.

Q. The first time you ever mentioned it to any one? A. I spoke about it of course the same as every one asked me about it all the time coming in, "How is the Sailor Boy;" how is this; how is the bar, and how is the wall"? Gracious, I could not commence to talk half what they asked me, the same as it would be with you or with any one else coming in on the bar every day on steamers and boats. They asked me a thousand and one questions that I would not know.

Q. Did you ever see any other disaster on that bar? A. Yes, sir; I have seen two or three, or three or four, small ones.

Q. Did you see any in the year 1888? A. No, sir; I don't think there was any then.

Q. Or in 1887? A. No, sir; not on the bar, that I know of. I don't remember.

Q. Have you got any memorandum in any other book you have got, of any other disaster that occurred on the bar? A. I have

got all of the ranges that any stone happens to fall over board or any lighter or barge, or anything of that kind that sinks there, I take an angle at ranges.

Q. That is, if any of your vessels engaged in that Government work, meets with an accident, you take the range of it? A. Yes, sir; so as to pick them up.

Q. With regard to other vessels, have you got any entry in this book, or any other, of any other disaster that occurred on  
219 that bar? \* A. Yes, sir; I don't know that I have the date of it. I don't remember that. Sometimes I put the dates down, and sometimes I don't. You will find a whole lot of things in regard to the school there. It is just to remind me at the time being of what I am obliged, that is all.

Q. You say you are obliged to report these things. Did you report this disaster of the "Sailor Boy?" A. The way I always do is, the engineer in charge comes down on the steamer. He will perhaps go down to-day or to-morrow, and he will say, "How is this?" I have got to have this in my mind, and I have to have a little book that I can take out and refer to. I don't make a written report every week or month, of everything that happens there.

Q. Do you ever make any written report at all, of anything that happens? A. Yes, sir.

Q. Did you ever report this accident to the "Sailor Boy" to the office? A. You will find things in there that I have reported to the office.

Q. Did you ever report this accident to the "Sailor Boy" to the office? A. No, sir; because we did not suppose there was any accident at the time.

Q. You did not? A. No, sir.

220 Q. What do you mean by that? \* A. The bar was comparatively smooth. We tow inside and discharge lumber. No one had any idea, I did not, that there was any harm in it.

Q. The bar was comparatively smooth? A. Yes, sir.

Q. You have seen it smoother? A. About as smooth as ever I saw it.

Q. Why don't you put down your memoranda in these books in the order of their date? A. Sometimes I have one book and sometimes I have two, and sometimes, a half a dozen on me. I am not much of a book-keeper anyhow.

Q. I see immediately preceding this entry of the "Sailor Boy," you have an entry made of November 7th, 1888. How does that happen? A. I don't know.

Mr. PAGE.—You will find entries at the end made in 1887?

Mr. MCGRAW.—Q. How do you know it was 2 o'clock and 10 minutes. A. I have a watch on me.

Q. Does your watch keep good time? A. Yes, sir; I think it is just as good a watch as there is in the world.

Q. You are quite certain you looked at that watch when the "Sailor Boy" struck? A. Yes, sir, I did.

Q. And made a memoranda? A. Yes, sir. \*

221 Q. Did you not first speak of this, of what you saw, in a saloon? A. No, sir.

Q. In San Pedro? A. No, sir.

Q. And when you were drunk? And did you not say at that time, when the "Sailor Boy" struck, you were on the west jetty and you saw it from the west jetty? A. I am not in the habit of doing any such thing.

Q. Did you not say you first saw this from the west jetty? A. I never said any such thing at all. I told you before I was not in the habit of doing such things as that.

Q. You do it occasionally, don't you? A. No, sir; I don't do it at all.

Q. Is there any other entry in this book made in January, 1888? A. I don't know.

Q. You say it was about two months ago, that you first spoke to Mr. Halstead about this matter? A. Somewhere about that.

Q. This is August. That would be in June then? A. It is somewhere about there. I cannot remember whether it was two months or two and a half. I don't keep such things as that in my mind.

Q. Was it as long ago as last April? A. I don't know.

Q. What do you think about it? A. I think about it of course. I tell you, I don't know. \*

222 Q. Was it as long ago as last January? A. I don't know.

THE COURT—The witness says he thinks it was about two months ago.

MR. MCGRAW—Q. Did you not start to come up here to attend the trial of this case in April last or May? A. I don't know. In April?

Q. April or May last? A. I forget what time it was. It is somewhere about two months ago, I think. I think so.

Q. Did you not start to come up here along about the last of March or the 1st of April? A. No, sir.

Q. Did you not go as far from San Pedro as Los Angeles and was stopped there by telegraph? A. No, sir.

Q. You are quite sure of that? A. I know I did not.

Q. You were not requested then by Mr. Halstead to come up here at any time previous to this time? A. I was requested to come here, but it was no March though.

Q. Not in March? A. No, sir.

Q. Or in April—the first of April? A. No, sir.

223 Q. Was it not on the second day of April? A. I don't know. I told you I did not know. I told you \* somewhere about two months ago according to the best of my judgment.

Q. Well, you did start up here at some time to attend the trial of this very case. A. I never did start.

Q. You never did start? A. No, sir; I never did, until yesterday at 10:40, then I did.

Q. Did you ever intend to come up here before to attend the trial of this case? A. Not that I know of.

Q. Never were asked to come before? A. Yes, sir; I was.

Q. When were you asked to come before? A. I did not leave my house at all.

Q. When were you asked to come here before? A. I cannot remember whether it was two months or two months and a half ago. I forget. I could not tell you the exact time. I was asked to come though.

Q. Have you got any memoranda showing how many men worked for you each day? A. I have a memoranda time book at my house ever since 1872.

Q. Why did you not bring that time-book with you? A. It would have taken a special car if I had.

Q. It would not have taken a special car, if you brought your time book for January, 1888? A. No, sir. \*

224 Q. Why did you not bring that time-book with you?

A. I did not know you wanted any such thing. You can find the time up in the office.

Q. Do you send a copy of your time-book up to the office? A. The checks are issued there, and the time-book is there.

Q. What do you mean by the time? Giving the time of each man's time; day by day? A. To keep the time of the men, who are there to work for the United States.

Q. Does it give the time, day by day? A. It gives the time day by day.

Q. Of the work they are doing? A. It does not specify the work. We hire the men by the month.

Q. What do you mean by day by day? A. I put down every day and the day of the month.

Q. What do you put down opposite those days? A. I put down, we will say, J. W. Brown, one day.

Q. That is for the first day of January, you would say, "J. W. Brown, one day?" A. Whatever day of the month it was.

Q. Then you do put down the day's work each day? A. Every man's time.

Q. That memoranda is in Colonel Mendel's office? A. It is in his office all the time.

Q. It does not show where the men worked? A. It shows they worked for the United States Government. \*

225 Q. It does not show whereabouts they worked? A. That will tell you.

Q. Does it show whether they were working at the end of the jetty or inside? A. It will tell you, they were building a wall, either the west jetty or the east jetty.

Q. Does it show which one they were working on? A. Yes, sir.

Q. On the east or west jetty? A. You could see it in the office. You cannot tell by the time-book. The time-book is the number of days they worked? That is all. All those things you will find in the office.

*Re-Direct-Examination.*

BY MR. PAGE.—Q. This little book is what you carried about, in which you made memoranda of different kinds? A. Yes, sir; I merely had this on me. You could see by that book, it has been wet through. \*

226 JAMES W. SIMMIE, called for the claimant, sworn.

MR. PAGE.—Q. Captain Simmie, your occupation has been a tug-master, has it not, for some years past? A. Yes, sir.

Q. Since when? A. Since March, 1887.

Q. Where have you been doing work as such? A. In the Bay of San Pedro.

Q. Towing over the bar? A. Yes, sir.

Q. In whose employ? A. The Wilmington Transportation Company.

Q. Do you remember on the 5th day of January, that an accident happened to the "Sailor Boy"? A. Yes, sir.

Q. On that day, what were you in command of, if anything? A. The steamer "Falcon."

Q. Belonging to that same employ? A. Yes, sir.

Q. On that afternoon, was there any time when you left your wharf to go out over the bar or to the bar? A. Yes, sir.

Q. Where is your vessel tied up while she is unoccupied? A. The berth for our steamers is situated about in the neighborhood of 200 or 250 feet from the end of the Southern Pacific Railroad Company's wharf.\*

227 Q. Seaward or inland? A. Inward.

Q. Inland? A. Yes, sir.

Q. You say you left that afternoon. What time did you leave? A. 2:15.

Q. Was there anything that caused you to leave that day at that time? A. Yes, sir.

Q. What made you leave? A. I left on account of a distress whistle from the "Warrior."

Q. The steam-tug "Warrior"? A. Yes, sir.

Q. How long after you got the steam-tug "Warrior's" whistle did you leave the place? A. I should judge in the neighborhood of five minutes; just as quick as we could get ready; it might be more, and it might be less.

Q. You went down of course to where the "Warrior" was? A. Yes, sir.

Q. And helped tow the vessel over the bar, or recover her? A. Yes, sir.

Q. Now, in the course of your business, is it your habit to keep any memoranda of what you do? A. Yes, sir.

Q. On this day, did you make any memoranda of what you did? A. Yes, sir; from my memoranda book you will find we are required by the Company to do so.\*

228 Q. Will you look at this book and state what it is? What is that book? A. This is my memorandum book.

Q. As Master of the steam tug "Falcon"? A. Yes, sir; it bears the steamer's name on the cover on the outside.

Q. When does it begin? A. It commences in December.

Q. What year? A. December 1st, 1887.

Q. And brought down to what date? A. The end of June.

Q. June, 1887? A. Yes, sir.

Q. Does that record what was done by you, and your tug, between those dates? A. Yes, sir.

Q. Turn to the date of January 5th, 1888, and tell me first when the writing that is inscribed on that page, was made; what day it was? A. The writing is made on the same day, and as quickly as possible, that we have the convenience to do so, after the work is done.

Q. That is, after you have finished the day's work? A. We have a scratch-book in our pocket, and if we have not time to write it in this, we put it in the scratch-book. At the time we do anything, we note the time, either by watch \* or the clock in the pilot house.

Q. You say that was done on that same day? A. Yes, sir.

Q. After you got back that evening? A. It is required by the Company that we write our journal up before we leave the boat at night. It must be written up before we leave.

Q. Read the entry. Perhaps Mr. McGraw would like to look at the book first.

MR. MCGRAW.—(After examining book). I object to the memorandum as not being made at the time of the transaction. It appears to be a copy of something else, as the witness says.

MR. PAGE.—On the contrary, it was made as soon as he could make it.

MR. MCGRAW.—The hour at which you started and left, you put down in some other book? A. Not always. I stated sometimes, we had a good deal of work and had not time to enter it here, so entered it on a scratch-book.

Q. How was it on that day? A. It was entered in this book.

Q. After you got through? A. Yes, sir; as soon as I got a chance.

Q. At night? A. I could not say positively whether it was done as soon as we stopped running, or before we left the boat that night. It was done that day.

Q. The hour of 2:15 that you put down there as having left, \* that entry was not made until a good many hours afterwards, was it? A. It was not a great many hours. You see the time that we left the vessel. It was done shortly after that.

Q. After you got through? A. Yes, sir.

Q. And after you knew there was a controversy as to the state of the tide and the draught of the vessel? A. No, sir; no controversy at all. That has nothing to do with my business here.

Q. Did you not know when you made that entry that there was a controversy? A. No, sir.

Q. Your tug belongs to the same Company as the tug "Warrior?" A. Yes, sir.

Q. Did you not know at the time you made that entry, that there was the controversy between the Master of the "Warrior" and the Master of the "Sailor Boy?" A. No, sir.

Q. As to the state of the tide? A. No, sir.

Q. And as to the draught of the vessel? A. No, sir; nothing to do with it at all. This showed the work that I did with my boat as required by the Company.

MR. MCGRAW.—We object to the introduction of this book.

THE COURT.—The objection is overruled.

MR. MCGRAW.—We except. \*

231 MR. PAGE.—Read the entry. A. The whole day's work.

Q. Yes. A. "Thursday, January 5th, 1888, 9:30 A. M. towed schooner "Pannonia" out. 10:30 towed schooner "Una" out and came in again. 11:30 made fast at wharf. 2:15 went to assistance of "Warrior," to tow schooner "Sailor Boy" off the bar, got her into smooth water, but stuck on inner bar." I made a remark there "tide on the gauge 12:8 inches."

MR. MCGRAW.—Q. What does that mean? A. At that time.

Q. What time? A. On that day.

Q. At what time; at what hour? A. At half past one.

Q. Do you mean that was high tide? A. I mean that that was what the gauge registered.

Q. At high tide? A. At half past one. I was not there at high water.

MR. PAGE—Q. How did you come to go and examine the gauge and record its position at that time? A. By request of the Captain of the "Warrior."

Q. Was that request made previous to your going out or afterwards? A. Previous.

Q. What object was there in ascertaining the gauge at that time? A. The Captain of the "Warrior" wanted to know  
232 what the\* gauge stood on, as the steamer "Eureka" was in his way, and he could not see from his boat without tying up, which would detain him some.

Q. It was about half past one when the "Warrior" was alongside the wharf, that he wanted to look at the gauge? A. Yes, sir.

Q. And could not do it, on account of some steamer? A. No, sir.

Q. And asked you to look at it at that time? A. It was about 25 minutes past one; somewhere in that neighborhood.

Q. What is that gauge that you speak of? How many gauges are there on that wharf? A. Just the one on the wharf. There used to be two, a nail gauge under the wharf. This was a floating gauge that we always used because it registered on top of the wharf. The other one we could not always see unless we went down a flight of stairs. It was some little distance off, and we could not always look at it.

Q. One of the gauges was under the steps of the wharf? A. Yes, sir.

Q. The other was a floating gauge which carried a pole up above the wharf, and on that pole could be seen the register of the tide, up to a certain point? A. The height of the water when that gauge was put there.

Q. That gauge was put there when? A. I don't know; before my time.

233 Q. In 1888, did that gauge register the actual tide on the outer bar? A. No, sir.

Q. What difference was there then, as between the inner bar and outer bar, and would be shown on the gauge? A. There was

at least two and a half feet on the inner bar and nearly three feet on the outer bar.

Q. The bars would register a greater amount of water than the gauge showed? A. There was more water on the bar than the gauge showed.

Q. Why was that? A. Because the channel had deepened that much from the time the gauge was placed there.

Q. Taking that gauge, how far could a man, by simply looking at that gauge, determine whether or not the tide was rising or falling at the precise moment he looked at it? A. He could not do it.

Q. Why not? A. Because he would have to mark it with a pencil, and see whether it was rising or falling.

Q. How is a gauge of that kind affected by the rise and fall of the swell? A. The least swell will make it rise and fall. A passing boat will do it.

Q. How far would the steamboats passing alongside of that wharf, pass from where that gauge is? A. From 50 to 150 feet.\*

234 Q. Would the motion of the boat under those circumstances, affect the gauge, that is, move it? A. Yes, sir.

Q. You know the gauge under the wharf? A. Yes, sir.

Q. How far is that an indication of whether at the moment you look, the tide is rising or falling? A. You could not tell anything by that because the swash from the boat would show the wet place on the tide gauge, so much higher than it really was.

Q. That is, any current that comes from the outside, would wet the gauge and indicate a higher amount of water than there really was? A. Yes, sir, to a casual observer he would have the idea that the tide had fallen that much.

Q. What is the distance from the Southern Pacific wharf or railroad wharf—I do not know whether it is the Southern Pacific or not—up to the San Pedro wharf? A. In the neighborhood of 3500 feet.

Q. That is from the outer end? A. From the lower end of the Southern Pacific Company's wharf.

Q. Could you tell that from guess or what? A. No, sir.

Q. Actual measurement? A. Actual measurement.

235 Q. Measured by yourself? A. A. Yes, sir.

Q. About 3500 feet? Yes, sir.

Q. Supposing a vessel to come in with a slight breeze, in tow of the steam tug "Warrior," and to be dropped from 400 to 500 feet below the wharf with the first of the ebb running; would that vessel drift up to the Southern Pacific wharf? A. Not if there was any ebb tide to amount to anything. If it was slack water she probably would go that distance with a light breeze and fair wind.

Q. If the tide was ebbing at all, she would not? A. If the tide was ebbing, we would not drop them there, but take them further up.

Q. What was the condition of the wind that day? A. The wind was westerly. We call it westerly; it is about west, southwest.

Q. Was there a heavy wind or a light wind? A. Quite a breeze in the morning, but it died out again. In the afternoon it got lighter.

Q. At the time you got to where the "Warrior" and the "Sailor Boy" were, what was the nature of the wind? A. Very light.

Q. What was the nature of the bar? A. The bar was apparently smooth.

Q. Is there usually more or less of a swell there? A. There is a little swell.

Q. Can you tell from the end of the railroad wharf by\*  
236 looking out, what the condition of the bar is? A. No, sir, not exactly.

Q. When you say not exactly, what do you mean? A. I mean you would be liable to be deceived. From personal experience I have found it out.

Q. Explain to the Court how a person would be deceived? Supposing you were at the end of the wharf and looking out towards the bar, explain how a person might be deceived—in what respect? A. You would be deceived as to the amount of swell.

Q. How does that come about? A. Because you are not in a position to see it properly.

Q. Can you see the water on the bar from the wharf? A. You could see it break on the middle ground, if it is very rough, from the wharf.

Q. If it is an ordinary day, can you then see the condition of the water? A. No, sir.

Q. I mean to say ordinary, with reference to the ordinary swell? A. No, sir; you cannot tell it at any time positively from the end of the wharf; the distance is too great.

Q. Can you see the bar from Kirkhoff's wharf? A. I don't think so; I could not positively say. I think not. The curve in the bay would throw Dead Man's Island in the way, I think.

Q. To what extent is it part of your duty or business to\*  
237 ascertain soundings on that bar? A. It is necessary for towing vessels in.

Q. As a matter of fact, do you determine soundings when you are moving over the bar? A. When we have been working, or when we left. It is necessary to take soundings for future reference. If I should tow a vessel in without making soundings, and anything happened the first question the owner would ask me, would be, "Did you sound?" And if I did not, it would look as if I neglected my duty, so it was the custom.

Q. That custom existed on board of the "Warrior" as well as on board your vessel? A. Yes, sir; it is always customary in all bar harbors.

Q. Do I understand the exception would only be when the vessels were light? A. When the vessels were light we did not do it.

Q. With all loaded vessels it was customary to sound as a rule? A. With larger draughts, to be satisfied that there was no charge.

Q. Before you became a tug-boat master, what was your business? A. My business was a Master mariner on sailing vessels.

Q. To what extent were you connected with steamers, if at all?

A. I had been Master of schooners for 13 or 14 years, previous to taking the steamer.

Q. Were those schooners lumber schooners? A. Yes, sir; entirely so.\*

238 Q. Are you familiar with the carriage of lumber cargoes and loading lumber cargoes? A. I am, principally with redwood.

*Cross-Examination.*

BY MR. MCGRAW—Q. What was the depth of water on that bar at high tide, on January 5th, 1888? A. About 12 feet 8, and 2 feet and a half added to it.

Q. 12 feet 8, plus 2 feet and a half? A. 15.4, on the inner bar.

Q. And six inches more on the outer side? A. In that neighborhood, yes, sir.

Q. 12 feet 8, plus 3? A. About 15.10.

Q. 15.8 to 15.10? A. 15.4 on the inner bar and 15.10 on the outer bar.

Q. It would make it 15.8 on the outer bar? A. I said 15.10 on the outer bar; in that neighborhood.

Q. Ebb tide, when it once gets started, it runs pretty fast? A. It depends on the tide.

Q. A 4-foot rise? A. It would be very slow at first.

Q. For how long do you mean by at first? A. The first hour.

Q. Would it be pretty fast after the first 15 minutes? A. It would run a little faster.\*

259 Q. Would it not drop within the first hour, at least, 8 or 9 inches? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. What time do you carry in your tug-boat? A. We have a clock in the tug-boat house.

Q. Standard time or local time? A. Standard time.

Q. That is the time that is used at San Pedro altogether? A. Yes, sir.

Q. The time that is used in the Railroad office and on the tug boats? A. Yes, sir; we use the same time.

Q. Did you not see the Master of the tug "Warrior" before you got back that night, when you went out to tow him in? A. No, sir.

Q. Did you speak with the Master of the "Sailor Boy"? A. No, sir.

Q. You spoke to neither of those Masters before you came back? A. No, sir.

Q. When did the "Warrior" come back; the same time that you did or before? A. I don't know when the "Warrior" came back. I had this business to attend to.

Q. You know whether she left before you did or not?\*

240 A. No, sir; I left first. He was in charge of the vessel, I was more helping him.

Q. Do you know how much swell there was on the bar when the "Sailor Boy" struck? A. I could not exactly say. There was no great swell; probably 6 to 9 inches.

*Re-direct Examination.*

BY MR. PAGE—Q. That would be the rise and the fall? A. Yes, sir; I did not stop to take any particular count of that.

Q. Where is Captain Melberg? A. He is supposed to be drowned.

Q. Drowned on his way home from Europe? A. On his way home on the steamer "Thingvalla." He was supposed to be because they have paid his insurance.

Q. Is it a usual or unusual thing to take a vessel over on the ebb tide, provided there is water enough? A. It was not customary. We were instructed to that effect. At the same time we were allowed to use our judgment in the matter. We sometimes have to do it; not large vessels; we did not tow on the ebb tide then.

MR. MCGRAW—Q. I suppose anyone who knows anything about tides, any sea-captain or pilot there, can, standing on the Railroad wharf, tell whether the tide is ebb or flow without looking at the gauge? A. He can look over the side of the wharf.

241 Q. He does not have to look at the gauge?\* A. Not necessarily.

Q. He can tell by looking out and seeing which way the craft is tailing? A. Yes, sir.

MR. PAGE—Q. Can he tell during slack water? A. No, sir.

Q. That is a period of half an hour before and half an hour afterwards? A. Yes, sir; according to the tide. Sometimes it is not quite so long. A large tide it would not be more than 15 minutes.

Q. At a small tide? A. At a small tide it would be half an hour.

MR. MCGRAW—You mean half an hour altogether—15 minutes before and 15 minutes after? A. Half an hour before, and half an hour afterwards.

MR. PAGE—Q. Half an hour each way? A. Yes, sir.\*

OTTO VON CALDERN, called for the claimant. Sworn.

242 MR. PAGE—Q. What is your business at the present time? A. Civil engineering.

Q. How long have you been practicing that profession? A. Fifteen years.

Q. Have you ever been engaged to work for the United States in the Coast Survey? A. Yes, sir.

Q. Have you ever been engaged in the Engineer's Department of the United States? A. Yes, sir.

Q. In 1887 and 1888, in what Department of the United States were you then engaged? A. United States Engineers.

Q. You work in that Department of the Government service took you to what point? A. To San Pedro, in 1887 and 1888.

Q. What was the nature of the work you did in 1887 and 1888 at San Pedro? A. To make a hydrographic survey of the bar and entrance to the Wilmington Estuary.

Q. As a matter of fact did you personally do it? A. I did personally superintend it, and was in a boat at the time the soundings were taken.

- Q. How were those soundings taken? A. They were taken with a pole to the nearest foot and tenth of a foot.\*
- 243 Q. As between a lead and a pole, which is the better method of sounding? A. The pole is the most accurate.
- Q. When soundings were taken, from what point, so far as the level of the water was concerned, would the soundings be determined? A. It is always a rule with us to take the bottom of the trough of the sea, and never the top. That is our rule. In taking soundings to take the bottom of the trough and never the top.
- Q. If there is any swell whatever, and soundings are taken, you take it from the lowest part of the swell? A. The lowest part of the swell.
- Q. You do not take any mean or average? A. No, sir.
- Q. Was the same rule followed in the Coast Survey, while you were connected with it? A. The same rule.
- Q. In 1887, you were making soundings of that bar? A. Yes, sir.
- Q. Have you got anything with you which shows the actual soundings that were ascertained by you during 1887 of that bar? A. I have a copy here of the survey that I then made. A copy of part of it.
- Q. Will you produce it; that part which shows the bar? A. That part which shows the outer bar of the estuary both of 1887 and 1888.\*
- 244 Q. These tracings that you produced, and which are marked Claimant's Exhibits 2 and 3, are tracings taken by yourself from your own work down there: are they not? A. Yes, sir.
- Q. What do the tracings actually show? A. They show the depth of water on the bar at that time.
- Q. In 1887, what month? A. May, 1887, and June, 1888.
- Q. I see a sketch there. What is the sketch that is in there? A. The sketch represents Deadman's Island and the two branches of the jetties.
- Q. Those are the jetties being built by the United States Government, to dredge out the bar? A. Yes, sir.
- Q. Give us the lowest water there was on the bar at the time that those soundings were taken at the low tides? A. In May, 1887, the lowest water in the channel of the bar was, 11 feet and 2 tenths, and in June, 1888, the lowest water in the channel at low water, spring tide, the same plane of reference as the other was, 11 feet and eight tenths.
- Q. So that between May, 1887, and June, 1888, there had been a gain of 6 tenths, at the lowest point? A. There had been an improvement on the bar, a gain in the difference between 11.8 and 11.2, which is 6 tenths of a foot.
- Q. From your knowledge of the bar, what would be a fair judgment of what the bar was in between those dates, namely in January, 1888?\*
- 245 A. It might be reasonable to infer that it had increased gradually from May, 1887, to June 1888, and that the condition of the bar in between there on January 5th, 1888, was about half way between 11.2 and 11.8. It might be reasonable

to infer that. If there be an increase of 6 tenths between these two surveys, the increase or betterment of 3 tenths, might be added to the 1887 survey, which would make it 11 feet 5 tenths.

Q. That judgment is found on the fact that there was a constant increase in the depth, by the use of the processes at that time, that were in use, for the purpose of dredging the bar? A. Yes, sir; the jetty system would increase it gradually, would tend to increase it from year to year, and month to month, and it is reasonable that on January 5th, 1888, the conditions were better than those of May, 1887.

Q. To what extent are the systems adopted by the United States Engineer Corps, used by the Coast Survey? Are they used at all? A. To show the changes in the channel from year to year to prove the effect of the jetty system, whether it betters the channel or otherwise.

Q. Has the Coast Survey used these in any way? A. The United States Coast Survey, in publishing their charts, used these surveys. It is so stated on their published charts, that such and such part of this large chart, is a copy of the United States Engineers survey of such and such a date.\*

246 Q. If there is a difference between the last Coast Survey chart, as published, and the figures which you now have given, which would be actually correct? A. These figures that I have in my hand are absolutely correct for those dates. If a Coast Survey chart shows less it might be reasonable to account for that in this way, that the Coast Survey's charts are not published for years. They may be in the lithographers' or copper-platers' hands for some time before they are issued, and a chart published in 1888 may show the depth of soundings taken in 1886.

Q. Does the Coast Survey make any difference in publishing its charts of the depth of water, based on a precautionary system, that the United States Engineers would not adopt when they simply want to find the actual results? A. It has been a system in the Coast Survey and Engineering Department, particularly in the Coast Survey, to get the least water, to give the ship the benefit of the doubt, rather to have it the least water than absolute correctness. That has been the tendency in all our surveys, to give the condition of the bar that is absolutely safe for the ship to enter.

Q. So that where a ship takes those figures, there is absolutely no doubt that she can get over? A. That it is absolutely correct. Every effort has been made to give the least water.

Q. Can you tell us at what time on the 5th day of January it was high water at San Pedro? A. I can, by a table.\*

247 Q. If you have got any memorandum there, that you have prepared in answering our request, you can use it? A. I have tables here. The Coast Survey table of 1888, gives high water at about 2 o'clock as 4.2, for San Diego, San Diego being the basis for San Pedro. Certain corrections are to be applied to the San Pedro table. San Pedro, 2 o'clock and 9 minutes; high water on January 5th, 1888, 4.2.

MR. MCGRAW—He has not given the correction yet.

A. The correction to be applied is a tenth, that is from any height

given from San Diego, one tenth must be deducted to give the height at San Pedro.

MR. PAGE—Mr. McGraw suggested that you had not given us the time when it was high water at San Pedro. I understood you to say it was about 2 o'clock? A. The correction to be applied would make it about 2 o'clock at San Pedro, high water.

Q. How much water would there be on the bar at high water on that day? A. The correction to be applied to the height is a tenth, the very latest edition of the tide-table, and that tenth taken from 4.2, would leave 4.1, the height at San Pedro on that day at high water about 2 o'clock.

Q. That would be the rise above the low-water spring-tide? A. The rise above low water spring tide.

Q. You would then add that as I understand you to say, to the low-water at the spring-tide it would be 11, and 2 tenths, plus 3 tenths?\*

248 Q. That would give us 11 and 5 tenths? A. Yes, as the depth of the water on January 5th.

Q. To that you would add 4 feet and one-tenth, which is the rise at San Pedro? A. To that should be added the 4 feet and one-tenth, to give the rise of the water on the bar at San Pedro.

Q. That would be 15 feet and 6 tenths? A. Yes, sir; 15 feet and 6 tenths.

Q. Now, there is a period generally known as slack-water on that tide, what is that period in point of length of time? A. It is very difficult to detect any difference in the height of tide in the first half hour. They are about stationary. A neap tide of that character will fall about 7 or 8 per cent of its range in the first hour.

Q. What would 7 or 8 per cent of the range of that tide be in actual figures? A. In actual figures it would probably represent a 10th and a half, or 2-tenths, that it would fall in the first hour.

Q. Of a foot? A. Of a foot.

Q. That is to say, there would be no change in depth of water except the 10 or 10th and a half of a foot for the half hour previous to the high-tide, or for a half hour subsequently? A. For half an hour subsequent to that certain absolute time given in the table. I mean to say that high-water is not an absolute point as stated  
249 in the table, but that it will be \* high-water a little before that time, and will continue to be high-water for some little time after, and that range may be 30 or 40 or 50 minutes before there is any appreciable difference in height.

Q. In the first hour, after the tide has reached the highest point, can you give us an idea of what the actual fall will be at that time? A. I can give exactly the range of that tide. The high water on that day was 4.1, and it fell to a low water of one foot, that is, there were 3 feet and one-tenth of a fall. That is the range of tide. 3 feet and a tenth of that particular tide. 8 per cent of that range of 3 feet, and one-tenth, that tide will fall in the first hour, which will be about 25 one-hundredths of a foot; so if the tide be 4 and one-tenth at high-water, one hour afterwards, it will be 2-tenths less.

Q. Then the range of the actual fall of the tide would be 4 and

one-tenth minus 2-tenths? A. Which would leave 3 feet and 9-tenths an hour after high-water.

Q. 3 feet and 9-tenths an hour after high-water on the bar had been reached? A. Yes, sir.

Q. Are these charts that you have just shown us, to-day, standard charts of the United States Government for that part of the country? A. Yes, sir; they are. \*

250 Q. That is, the two surveys of 1887 and 1888 are to-day's standard? A. 1887 and 1888 are the standard charts; the Coast Survey being willing to publish them with their charts they are as standard as things of that character, made on the Coast.

Q. And the Coast Survey charts, I understand you, are actually made from your soundings—the sounding that you made on those dates? A. They were; that particular spot. The Coast Survey publishes a chart of a very large area of the entire San Pedro harbor. They take the most recent survey for that particular part, showing the entrance to the bar at Dead Man's Island.

Q. They have accepted your soundings in that particular place where you made them, as authority? A. They do. That is done on all points on the Coast, as the Coast Survey will take data of that kind from the engineers.

Q. During the time that you were there, did you happen to come across a man of the name of Barse? A. Yes, sir; he was with me.

Q. How long a time was he at work with you? A. He was with me during the whole time in 1887; that is, from six weeks or two months perhaps.

Q. Was he with you afterwards in 1888? A. Yes, sir; and in 1888 he was also with me.

Q. To what extent was he with you; every day? A. Nearly every day.\*

251 Q. While you were taking soundings? A. Yes, sir.

Q. Did you ever know Mr. Barse to be under the influence of liquor? A. No, sir; I have not.

#### *Cross Examination.*

By Mr. McGRAW—Q. Look at this Coast Survey chart 610, and see if that is not the one which embodies your survey of 1887 and perhaps of 1888? A. Yes, sir; this is a Coast Survey chart, but not the most recent hydrography of this chart.

Q. You notice that it is published in November, 1888? Yes, sir; published at that time.

Q. It says that the surveys were made up to 1888? A. Yes, sir; that is a standard chart; that one with a dot.

Q. That evidently was completed after your survey of 1887, then? A. It may not be so, because it takes a long time to publish one of these.

Q. Does it not state there that that includes the hydrographic survey up to 1888? A. 1883 and 1888. Between 1883 and 1888, yes, sir. I would take that as a standard in 1888.

Q. That shows somewhat less water on the bar than your testimony shows? A. Yes, sir; it shows 10 and three-quarters feet near the red buoy.\*

252 Q. You had 11? A. I had 11 and 2 tenths.

Q. On your survey in 1887? A. I find a similar sounding of 10 and three-quarters (referring to notes) a little out of the channel, and the Coast Survey being very particular about depths, and would rather give less, may have taken a sounding a little out of the channel nearer the red buoy, to show how much water there was near the buoy, which is really not the depth in mid channel, I should not consider 10 and three-quarters a mid-channel depth, but a little on one side of it.

Q. How wide is that channel where there is a depth of 11 feet?

A. Where the depth of 11.2 is given in 1887, there may be 50 feet wide there in that spot, where 11.2 is given, according to the scale of this map.

Q. How wide is the bar? How far does a vessel have to travel to cross the outer bar? A. 170 feet.

Q. That is from what depth to what depth? A. That would be from a depth of 12 feet to 12 feet, in the distance of 170 feet. The least depth would be 11.2. That would be for a distance of only 50 or 60 feet. The rest of it would be more than that.

Q. Did you understand what I meant when I asked you about the width of the channel—you say it is 50 feet length where the ship would be 11 foot, 2, that is the way in which the ship

253 was travelling across the bar?\* A. When I said 50 feet I meant the available width of the channel for the ship to move in from side to side.

MR. PAGE—From wall to wall of the channel; is that the idea? A. Yes, sir; from side to side of the channel; the length of that channel being 170 feet.

MR. MCGRAW—Q. Now do not the tide tables for 1888 give a deduction of two-tenths per cent from San Diego to San Pedro? A. Of 1888, they do, but of 1891, they give only one tenth. These corrections are improved from year to year as more data is collected. Better corrections are given, and it always is the rule with us, to take the very latest data. I have taken the one-tenth from the Coast Survey tide table as the correction for 1891. These data improve. More of it is collected, and from year to year better data are given and issued.

Q. Then the percentage of difference between the different points upon the Coast as to tide, that is a fixed quantity that does not change from year to year? A. They are predicted from year to year.

Q. It is a fixed quantity whether you get at the correct prediction or not? The actual difference does not change from year to year? A. Which actual difference?

Q. The difference between the rise of tide at one point and the rise at another. There would not be two-tenths of an inch in one year between San Pedro and San Diego, and 3-tenths in another year?\* A. No, sir; the difference would be the same. It is simply a question of the amount of the data. A man observing one lunation would not get at as correct a data as a man observing 10 lunations.

Q. Now, about a tide running out, does not the rapidity with

which the water lowers after the point of high-tide is reached, depend a good deal upon the formation of the shore and the channel, and perhaps something upon the wind? A. It depends something on the meteorological conditions of the day. Ordinarily the percentage of the fall of the neap, the first, second and third hours, I have stated from actual observations when I was there in 1887 and 1888, and observed neaps during a lunation. I there found, and the different neaps agree very nearly with each other, that seven or eight percent in the first hour would hold good as the drop or fall in the first hour's range of the tide. These percentages are my own. I do not take them from the Coast Survey table, but from actual observation while I was there.

Q. You have nothing to do with the keeping the time of the men or superintending it at the office up here? A. No, sir; I had nothing to do with that.

Q. Do you know whether records are kept of the time, in the office here? A. Yes, sir; that I know of. Records of the time are kept.

Q. Where will they be found, in Colonel Mendel's office? A. In Colonel Benyeaud's, of the Army.

Q. They will not be found in Colonel Mendel's office? \*  
255 A. No, sir; Colonel Benyeaud will be in charge of that.

Q. He is at 533 Kearney street? A. It is the same office as Colonel Mendel's, 533 Kearny street.

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MR. PAGE.—That is our case.

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(TESTIMONY CLOSED.)

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[Endorsed:] Filed September 2d, 1891.

SOUTHARD HOFFMAN, *Clerk*,  
By J. S. MANLEY, *Deputy Clerk*. \*

256 LIEUT.-COL. W. H. H. BENYAURD, }  
Corps of Engineers, U. S. A., }  
Post-Office Box 2427.

U. S. ENGINEER'S OFFICE,  
No. 533 Kearny Street, San Francisco, Cal.,  
September 1st, 1891.

In January, 1888, I had a small force of men working on the east jetty at San Pedro, Cal., none were employed on the west jetty. The men worked four days. I cannot state whether they were discharged on the 4th or 5th. They are, however, put down on my time sheet as working on the 1st, 2nd, 3rd, and 4th. I am satisfied that no work was done on the west jetty in 1888, as shown from the records in my office.

W. H. H. BENYAURD,  
*Lieut. Col. Corps of Engineers.*

[Stipulated:] That the foregoing statement be accepted and received as testimony in the case of S. H. Harmon Lumber Co. v. Tug Warrior.

E. W. MCGRAW,  
*Proctor for Libellant.*  
PAGE & EELLS,  
*Proctors for Claimant.*

[Endorsed:] Filed September 2d, 1891.

SOUTHARD HOFFMAN, *Clerk.*  
By J. S. MANLEY, *Deputy Clerk.* \*

257 In the District Court of the United States for the Northern  
District of California.  
In Admiralty.

S. H. HARMON LUMBER CO., }  
*vs.* } No. 5566.  
STEAM TUG "WARRICK," }

*Opinion of Hon. E. M. Ross, District Judge.*

The libel charges that the schooner in question was injured by the carelessness of the master of the tug in attempting to tow the schooner over the bar at San Pedro, at a time when the water was insufficient in depth to float her. It alleges that the master of the schooner informed the tug-master that the schooner's draft was fourteen feet and six inches; that the master of the tug undertook the service; that the tide was ebbing and too low to admit of the towage, and as a result that the schooner grounded and was damaged. The answer set up that the accident was caused by the fact that the master did not correctly give the draft of the schooner; that there was sufficient water for the draft given, but not not enough for the actual draft, which the defense claims was over fifteen feet.

I have attentively read the testimony of all of the witnesses, and my conclusion is, that the disaster was the result of the mistake of the master of the schooner in giving her draft at fourteen\*  
258 feet and six inches, whereas it was, as I think the evidence shows, either fourteen feet and eleven inches or fifteen feet. The mistake of the master was probably due to the fact that it was his first voyage with the schooner; but I am satisfied from the evidence that it was made and that it was the cause of the accident.

It results that the libel must be dismissed, at libellant's costs. So ordered.

ROSS,  
*District Judge.*

[Endorsed:] Filed, March 2nd, 1892.

SOUTHARD HOFFMAN, *Clerk.*  
By J. S. MANLEY, *Deputy Clerk.*\*

259 At a stated term of the District Court, of the United States  
of America, for the Northern District of California, held at  
the Court-room, in the City of San Francisco, on Wednesday, the

2nd day of March, in the year of our Lord one thousand eight hundred and ninety-two.

Present :

The Honorable WM. W. MORROW, *Judge*.

S. H. HARMON LUMBER Co.,

*v.*

STEAM TUG WARRIOR, her tackle,  
apparel, etc.

} No. 5566.

In this cause on reading and filing the opinion of the Honorable E. M. Ross, to whom this cause was heretofore submitted for consideration and decision. It is by the Court ordered that the libel herein be and the same is hereby dismissed at libellant's costs.\*

At a stated term of the District Court, of the United States of America, for the Northern District of California, held at the Court-room, in the City of San Francisco, on Friday, the 13th day of May, in the year of our Lord one thousand eight hundred and ninety-two.

Present :

The Honorable WM. W. MORROW, *Judge*.

S. H. HARMON LUMBER Co.,

*v.*

THE STEAM TUG "WARRIOR," etc.

} No. 5566.

In this cause on motion of Charles Page Esq., proctor for the claimants, a decree dismissing the libel at libellants' costs was this day duly signed and entered.\*

261 District Court of the United States for the Northern District of California.

In Admiralty.

S. H. HARMON LUMBER Co., Libellant,

*v.*

STEAMTUG "WARRIOR," etc., WILMINGTON

TRANSPORTATION Co., Claimant.

At a stated term of the District Court of the United States for the Northern District of California, held at the Court-room in the Appraisers' Building, in the City of San Francisco, in the February Term, 1892, of said Court, on the 13th May, 1892.

Present :

Honorable W. W. MORROW, *District Judge*.

The above cause having come on regularly to be heard on the pleadings and proofs, and counsel for the respective parties having been heard and due deliberation had.

It is now ordered, adjudged and decreed, that the said libel be and hereby is dismissed at libellant's costs.

WM. W. MORROW,

*Judge*.

[Endorsed:] Filed, May 13th, 1892.

SOUTHARD HOFFMAN, *Clerk*.\*

262 In the District Court of the United States for the Northern District of California  
In Admiralty.

S. H. HARMON LUMBER Co., }  
vs. }  
STEAM TUG "WARRIOR," ETC. }

PROCTOR'S COST BILL.

Docket fee.....	\$20 00	
Attendance 10 depositions.....	25 00	\$45 00

H. Johnson, S. C. Mitchell, H Hadsen, E. Johnson, H. Johnson, H. Dahlof, L. Hannah, D. W. Weldt, C. F. Hall, J. P. Melburg.

It is hereby stipulated that proctor's costs, may be taxed at \$45.

E. W. MCGRAW,  
*Proctor for Libts.*

Taxed at \$45.

SOUTHARD HOFFMAN, *Clerk.*

[Endorsed:] Filed May 13th, 1892.

SOUTHARD HOFFMAN, *Clerk\*.*

263 In the District Court of the United States, Northern District of California.  
In Admiralty.

S. H. HARMON LUMBER Co., }  
vs. }  
STEAM TUG "WARRIOR," ETC. }

CLERK'S AND COMMISSIONER'S COSTS.

Ap. 3, '88. Marshal's costs.....	\$24 00
July 7, '88. Costs of deposition of witness Melburg.....	26 00
Aug. 21, '91. Costs of deposition of Hall.....	21 60
Sept. 4, '91. Attendance of witnesses Barce, Von Geldern, Simmie, each \$1.50.....	4 50
Mileage of Simmie & Barce, 100 miles each way, 400 miles altogether.....	20 00
	\$95 10

N. D. OF CALIFORNIA—SS

Charles Page, being duly sworn, says that the foregoing costs bill is correct; that the disbursements therein charged were necessarily and actually made. That he is the proctor for the claimants.

CHAS. PAGE.

Subscribed and sworn to before me this 13th of May, 1892.

JOHN FOUGE.

*Commissioner United States Circuit Court, Northern District of California.*

Taxed at \$95.10.

O. K. MCGRAW.

SOUTHARD HOFFMAN, *Clerk.\**

264 [Endorsed:] Filed May 13th, 1892.

SOUTHARD HOFFMAN, *Clerk.*

265 District Court of the United States the Northern District of California.

S. H. HARMON LUMBER CO. & AL., }  
 v. } No. 5566.  
 STEAM TUG "WARRIOR," ETC. }

## CLERK'S COSTS.

1888.				
April 3.	Filed libel .20.	Filed stipulation of costs .20.....	40	
	Issued monition, 2.40 and copy 2.00.....		4 40	
	Issued notice for publication.....		90	
	Filed claim .20. Filed stipulations for costs .20.....		40	
	Filed bond to U. S. Marshal.....		20	
	Filed approval of bond .20. Issued notice of bonding .70....		90	
12.	Made copy of libel 15 fos.....		3 00	
17.	Filed monition on return .20. Filed return .20. Entered return .30 .....		70	
	Order proc. .30. Engr. order .60. Filed order .20.....		1 10	
	Order clmt. allowed five days to ans. .30. Engr. order .60			
	Filed order .20.....		1 10	
26.	Filed answer.....		20	
1890.				
Nov. 25.	Filed stipulation for substitution of proctors.....		20	
	Order E. W. McGraw substituted, etc., .30. Engr. order .60.			
	Filed order .20.....		1 10	
Aug. 20.	Filed depn. of Hall.....		20	
24.	Order depn. published and filed .30. Engr. order .60. Filed order .20.....		1 10	
	Filing of depositions.....		1 40	
	Swearing 1 witness for lib. .20 and 3 for clmt. .60.....		80	
Sept. 2.	Filed testimony 20. Filed test'y of Benyaurd .20.....		40	
1892.				
Mch. 2.	Filed opinion by Judge Ross.....		20	
	Order libel dismissed .30. Engr. order .60. Filed order .20		1 10	
May 13.	Order decree signed and entered .30. Engr. order .60. Filed order .20.....		1 10	
	Filed final decree .20. Ent. same .30.....		50	
	Filed proctors' bill of costs .20. Filed Clerk's and Coms. bills of costs .40.....		60	
	Made and filed judgment record.....		1 50	
	Dockets and Indices.....		6 00	
				\$29 50

## COMMISSIONER'S COSTS.

1888.				
April 3.	Verification to libel .50.	Taking stipulation for cost lib. 3.00	3 50	
	" " claim .50.	" " " " clmt. 3.00	3 50	
	Taking bond to U. S. Marshal.....		3	
26.	Verification to answer.....		50	
1892.				
May 13.	Verification to proctor's bill of costs.....		50	11 00
				\$40 50

Clerk's and Commissioner's costs taxed at \$40.50.

SOUTHARD HOFFMAN, *Clerk.*

[Endorsed:] Filed May 13th, 1892.

SOUTHARD HOFFMAN, *Clerk.\**

266 District Court of the United States for the Northern District of California.

S. H. HARMON LUMBER Co., (a corporation) J. M. Weatherwax,  
S. H. Harmon, E. N. Harmon, Wm. Kieth, Henry Johnson,  
Geo. M. Mitchell, Jas. Sennett and L. Mansur, Libellant,

vs.

STEAM TUG "WARRIOR," Respondent.

To Claimants of Steam Tug Warrior and to Page and Eells, their  
Proctors:

Take notice that S. H. Harmon Lumber Co. *et al.*, libellants above named, intend to appeal and do hereby appeal from the final decree of the District Court in this cause to the United States Circuit Court of Appeals for the Ninth Circuit at the next term thereof.

E. W. MCGRAW,  
Proctor for Libellants.

Dated San Francisco, May 19, 1892.

[Endorsed:] Received copy of within notice of appeal this May 19, 1892.

PAGE & EELLS,  
Proctors for Claimants Steam Tug "Warrior."

Filed May 19, 1892.

SOUTHARD HOFFMAN, Clerk.\*

267 At a stated term of the District Court of the United States of America for the Northern District of California, held at the court-room in the City of San Francisco on Thursday, the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The Honorable WM. W. MORROW,  
Judge.

THE S. H. HARMON LUMBER COMPANY, }  
v. } No. 5566.  
THE STEAM TUG "WARRIOR," ETC. }

On motion of E. W. McGraw, Esq., proctor for the appellant, it is hereby ordered that the libellant be allowed, and it is hereby allowed, to appeal from the decree made and entered herein on the 13th day of May, 1892, to the United States Circuit Court of Appeals for the Ninth Circuit and on like motion it is further ordered that the bond on appeal be and the same is hereby fixed in the sum of five hundred dollars.\*

268 In the District Court of the United States, for the Northern District of California.

In Admiralty.

THE S. H. HARMON LUMBER Co., (a corporation), J. M. Weatherwax, S. H. Harmon, E. H. Harmon, Wm. Kieth, Henry Johnson, George M. Mitchell, James Sennett, and L. Mansur, Libellants,

vs.

STEAM TUG WARRIOR, Respondents.

Know all men by these presents: That I, E. N. Harmon, as well on my own behalf as on behalf of all other libellants, as principal, and Jacob Anderson and Martin Calhoun, as sureties, are held and firmly bound unto the Wilmington Transportation Company, claimants of the steam tug Warrior, in the sum of five hundred dollars, to be paid to the said Wilmington Transportation Company, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Whereas, the above-named appellants have prosecuted an appeal to the United States Circuit Court of Appeals for the\* 269 Ninth Circuit, to reverse the decree rendered in the above suit by the District Court of the United States for the Northern District of California.

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation to be void, otherwise the same to remain in full force and virtue.

Dated at San Francisco, this twenty-first day }  
of May, eighteen hundred and ninety-two. }

E. N. HARMON,  
JACOB ANDERSON,  
MARTIN CALHOUN.

The above bond is satisfactory to respondent, and justification of sureties is waived.

S. F., May 23, 1892.

PAGE & EELLS,  
*Proctors for Respondent.*

Approved: M. W. MORROW,  
*District Judge.*  
[Endorsed:] Filed May 23rd, 1892.

SOUTHARD HOFFMAN, *Clerk.*  
By J. S. MANLEY, *Deputy Clerk.\**

270 In the United States District Court Northern District of California.

In Admiralty.

S. H. HARMON LUMBER COMPANY, et al., Libellants, }  
*vs.* } No. 5566.  
THE STEAM TUG "WARRIOR," etc., Respondent.

It is hereby stipulated and agreed by and between the Proctors for the respective parties, that the original Exhibits, viz: (1) "Libellants' Exhibit" (Memorandum Book); (2) "Claimants' Exhibit No. 2"; "Claimants' Exhibit No. 3"; (4) "Libellants' Exhibit (Map 610)", may be transmitted to the Circuit Court of Appeals, without being attached to the "Apostles."

San Francisco, Cal., June 6th, 1892.

(Signed) PAGE & EELLS,  
*Proctors for Clt.*  
E. W. MCGRAW,  
*Proctor for Libellant.*

[Endorsed:] Filed June 7th, 1892.

SOUTHARD HOFFMAN, *Clerk*.\*

271 District Court of the United States Northern District of California.

S. H. HARMON LUMBER Co., et al., }  
 vs. } No. 5566.  
 STEAM TUG "WARRIOR," etc. }

ACCRUING COSTS CLERK'S AND COMMISSIONER'S.

1892.

May 18,	Filing Assignment of Errors .....	\$ .20
19,	Filed Notice of Appeal .20 Order appeal granted, etc., .30 .....	.50
	Engr. Order .60, Filed Order .20.....	.80
23,	Filed Bond on appeal, .20, Filed approval of bond .20.....	.40
27,	Filed Formal Appeal .20.....	.20
June 7,	Filed Stipulation, etc., .20.....	.20
	Apostles, etc.....	230.50
	Filed receipt Clerk Circuit for Apostles.....	.20

" " " Accruing Costs and Commissioner's .20... \$233.20

COMMISSIONER'S COSTS.

1892.

May 23,	Taking Bond on Appeal.....	3.00
	Total .....	\$236.20

Taxed at \$236.20.

SOUTHARD HOFFMAN, *Clerk*.

[Endorsed:] Filed June 7th, 1892.

SOUTHARD HOFFMAN, *Clerk*.

UNITED STATES OF AMERICA, }  
 Northern District of California. } ss.

I, Southard Hoffman, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing and hereunto annexed two hundred and seventy-one pages, numbered from (1) to two hundred and seventy-one (271) respectively, contain a full, true and correct transcript of the record in said District Court in the cause entitled "The S. H. Harmon Lumber Company," et al., vs. The Steam Tug "Warrior," etc., made up pursuant to Rule 52 of the Supreme Court of the United States.

[SEAL.] Witness my hand and the seal of said Court at San Francisco, this 8th day of June, A. D. 1892.

(Signed) SOUTHARD HOFFMAN, *Clerk*.